A HANDBOOK OF INDIAN LEGISLATURES

SECOND EDITION

Dedicated

to

My father and Mother

whose

Loving Memory I ever cherish.

A HANDBOOK OF INDIAN LEGISLATURES

A Companion for M.L.A.'s, M.L.C.'s, Officials,
Local Bodies, Indian States, etc.

BY

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PREFACE

TO THE FIRST EDITION.

The introduction of the new constitution of India imposes heavy responsibilities on all the citizens, whether they are legislators, publicists, officials or students. The present work is intended to help them in equipping themselves with the required knowledge with special reference to legislatures whose number and strength have enormously increased under the new regime. Efforts have also been made to bring together in this handy volume • other necessary information in its proper historical setting in order to save the reader from perusing and assimilating the vast literature on the subject. The work is exclusively descriptive in nature and no criticisms have been attempted or suggestions offered. The material has been derived mostly from government publications, standard books on Indian constitution and parliamentary procedure; and therefore no originality is claimed. In fact the original and detailed portions have been deliberately witheld to be included in the main work that is yet to come out as a doctorate thesis on Legislative Procedure in India, which could not be presented due to certain most unfortunate obstacles in its progress. The chapters on procedure have been based on the relevant provisions of the Government of India Act, 1935, the existing rules of procedure and a careful study of the actual working of the various provincial councils and the central legislature. The rulings quoted need hardly be taken as final; although most of them may be taken as established practices.

Since the text of the book has been printed, the Government of India in an extraordinary issue

of their Gazette have published a notification dated 24th January, amending the Indian Legislative Rules. The new rules provide that notice of a motion for adjournment should not only be handed over to the Secretary of the Assembly but must, in addition, be delivered to the Member of the Government concerned. They also empowered the Governor-General to disallow adjournment motions either before or after their admission by the President. Further the Governor-General is empowered to disallow such motions even by telegram when he is out of station. Certain changes are also under contemplation in the system of questions. The existing practice is that a member can ask any number of questions and these may relate to most diverse matters. Thus the questionnaire may jump from Agriculture to Railways from Railways to Finance and so on. This causes a great inconvenience. Accordingly the Government are now considering to bring the practice more into line with that prevailing in the House of Commons where a member is allowed to ask only 3 questions a day and each member of the Government has his own particular day for questions.

I take this opportunity of acknowledging my indebtedness to the Lucknow University, my alma mater, particularly to Dr. V. S. Ram. M. A., Ph. D., Head of the Department of Political Science, for his kind help and valuable guidance in the preparation of the book.

R. R. SAKSENA.

Katchery Road,
Lucknow.
1st February, 1937.

PREFACE

TO THE SECOND EDITION

In the second edition only a few changes have been made to bring the book uptodate in the light of the new Orders in Council. The Instruments of Instructions to the Governor-General and Governor which have since been released for publication are reproduced in appendices VIII and IX. In addition a list of Orders in Council and regulations under the Government of India Act, 1935, passed upto 20th April 1937, has also been appended for ready reference.

It is indeed a pleasure for me to acknowledge my deep debt of gratitude to Rai Bahadur Surendra Nath Ghosh, Ex-Secretary, Legislative Council, for his most valuable suggestions and helpful guidance in the production of this edition. In fact I owe much to him and to Mr. G. S. K. Hydrie, Barrister-at-Law, Secretary, Legislative Assembly, for my knowledge of parliamentary procedure.

Lastly I thank my readers particularly the members of the new legislatures for the kind encouragement and unstinted support, without which the second edition would not have appeared so soon.

R. R. SAKSENA,

Katchery Road,
Lucknow.
20th April, 1937.

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EXPLANATIONS AND ABBREVIATIONS.

'The Act' means the Government of India Act, 1935, unless there is something repugnant in the subject or context.

'Chair' means president or speaker or any other person presiding over the meeting of the house.

'Governor-General or Governor, means the Governor-General' in case of the Central or Federal Government; and Governor in case of a provincial Government.

'Legislative Assembly' means Legislative Assembly of India as constituted under the Government of India Act, 1919. But Legislative Assembly with reference to the new constitution of a province means a provincial Legislative Assembly as constituted under the Government of India Act, 1935.

L. A.D. = Legislative Assembly Debates i.e. Official Report of the Indian Legislative Assembly as constituted under the Government of India Act, 1919.

U. P. L. C. P. = United Provinces Legislative Council Proceedings i. e. Official Report of the United Provinces Legislative Council as constituted under the Government of India Act, 1919.

CHAPTER I.

INTRODUCTION.

"Unless there is an equitable adjustment in a state of rights, offices and functions, so that the executive may have sufficient powers, the senate sufficient authority, and the people sufficient liberty, the framework of government cannot remain stable and free from violent change."

—*Cicero.*

1. Emergence of the State.

" A man who is not a member of the society is either a beast or a god " is the well-known saying of Aristotle. Man is by nature a social and political being. The need for order and protection brought the primitive men together ; and no aggregation of people could long exist without some form of association, of communication and of more or less co-operation. In those parts of the earth where population became numerous such conditions were particularly necessary. Increasing contact of man with man compelled some sort of regulation concerning mutual relations, even if at first it were nothing more than the enforced subjection of the weak by the strong, or the combination of several

against a common enemy. As economic life advanced more definite and authoritative regulations concerning things, as well as persons, were needed. Thus arose the crude beginnings of law and government. Further progress in civilisation demanded more definite and powerful organisation, with further sub-divisions of governmental duties and increasing political consciousness, in other words, the modern state.

2. The Government.

The modern state, therefore, is a gradual and natural historic evolution. It is a slow and continuous development of human society, out of a grossly imperfect beginning though crude yet improving towards a perfect and universal organisation of mankind. The state, as such, is based more on reason and general will, than on fear and force. Government is the instrument or machinery of the state. It is the organ through which the will of the sovereign is enforced. Yet it is a part of the state. All the citizens of the political community constitute the state ; a much smaller number, though in modern states a fair proportion, comprise the government. It includes all those persons who are occupied in admiring the 'will of the state'—the sum total of all the legislative, executive and judicial bodies in the body politic. In its broader sense the government may be defined as 'the sum total of those organisations that exercise or may exercise the sovereign power of the state.' A state cannot exist only as the organisation of the state. While the term 'state' is an abstract term and may be conceived apart from

the existence of any actual state, since all states are alike in essence, government is distinctly a concrete term and its forms vary, being determined in each case by the political conditions in each state. Government is thus the existing adjustment between the state and its individuals, and the means by which inter-state relations are maintained. It is the machinery through which the purposes of the state are formulated and executed.

3. THE CONSTITUTION.

The definite set of customs, rules and regulations that relate to the functions, working and organisation of the government are said to comprise its constitution. In other words the constitution is that body of rules or laws, written or unwritten which determine the organisation of the government, the distribution of powers to the various organs of the government, and the general principles on which these powers are to be exercised. The object of the constitution is to limit the arbitrary power of the executive or to guarantee certain rights to the governed. In short it attempts to determine the exact position of the sovereign power, which is the ultimate authority in a state.

The underlying principles are the same in all the constitutions but the external aspects of the process of constitutional development vary, widely in different states. The British constitution is a product of age-long evolution and has never been embodied in a single instrument. In fact much of the English constitution has never been put into documentary form, but it consists of long

recognised customs, traditions and precedents. In other countries the process of constitution-making has been more discontinuous, more deliberate and often more violent. Monarchies often have been obliged because of revolution on the part of their subjects, to grant and put into effect complete constitutions. In other instances people have succeeded in forcing the calling of some sort of a constituent assembly empowered to form a constitution, and still in other cases people have gained the right on their own initiative to summon such a constituent assembly. The American and German constitutions were framed by conventions consisting of delegates representing the several states and the former were ratified by a specially elected convention in each state of United States of America. Virtually all written constitutions have come into being through somewhat similar process. A constituent assembly of some sort draws them up, and they are put into effect by this body or by a process of ratification in which the people directly or indirectly participate.

4. SEPARATION OF POWERS.

The constitution defines various organs of the government for a government like an individual requires various organs to discharge its duties. The body can hardly work efficiently if it has no hands, no feet or eyes or ears. Similarly the government can hardly function properly unless it has different organisations to look after each activity of the state. These are usually three, the legislative, the executive and the judicial.

The legislature is concerned in the making of law, executive officers in the carrying out of law, and the judiciary, in deciding as to the application of law to particular cases. While in theory these functions seem to be separate, in actual practice no clear-cut distinction is possible. Executive officers must exercise wide discretionary powers in administering law, and must deal with questions concerning which no law exists; and judges in their decisions often create new law as well as administer existing law. All the same it is highly desirable that these three parts of the government must be kept as separate as possible and that each of these departments should be limited to its own sphere of action and within that sphere should be independent and supreme.

5. The Legislature.

In this book we are concerned more with the legislative organ of the government. It would therefore be better to understand its full implications in respect to its origin and law-making powers. The idea of deliberately creating law, the most important function of modern legislature, is comparatively recent. At first magistrates and priests alone could create law. Representing the power of God or the majesty of the state, father and king or, later, priest or archon, were lawgivers. In the Roman Empire the emperor was the source of all law. When national states arose, their kings claimed the same prerogative, and in some states even to-day in legal phraseology at least, laws are issued by the Crown. At times the

assemblies of the learned and the noble, whose consent and support was needed on important questions, gradually established themselves as part of the law-making body, and by various methods secured the right to initiate, as well as to endorse, new laws. The assemblies in Greece and in Rome and the early Teutonic moots represented this state. Finally, the system of representation, begun in England, furnished a device that enabled the growing idea of popular sovereignty to manifest itself effectively, and, in modern states, legislation is consequently controlled by popular legislatures.

The powers of the legislatures in respect of making law are being widened every day. Custom and equity are being replaced by definite enactments, judicial decisions are limited by codification, and scientific commentary does little except to discuss cases. While other sources are no doubt present, they tend increasingly to be swallowed up in legislation.

Legislatures are concerned with deliberations and discussions, with the balancing of policies and the compromising of collective motives. It is therefore essential that they include a large number of persons, represent all important sections, interests and classes, and derive their authority ultimately from the masses of the people. In addition to their large size, the modern legislatures secure further deliberation and caution by a separation into two houses, forming what is called a bicameral legislature. This system originated rather accidentally in England and is now adopted in almost all the countries of the world.

The functions of legislatures, making due

allowance for difference in detail and in scope of authority, may be classified as follows :—

1. They formulate the law of the land, removing obsolete provisions and adapting legislation to the changing conditions of modern life.

2. They control the finances of the state, determining the method of raising money, the amount to be raised and the purpose of its expenditure.

3. They are gradually extending their control over the international relations of the state; and by means of their power over the ministry or over finances, act as a check on them.

4. They exercise many powers not purely legislative. In deciding contested elections, trying their own members, or impeaching other officials, they exercise judicial powers. In appointing or sharing in the appointment of officials, regulating minor executive offices, appointing commissions and passing private legislation, they enter largely into administration.

It may however be noted that the former confidence in the legislatures is somewhat declining. On the one hand, commissions of experts are being created to deal with problems requiring more specific knowledge than a large body of legislators is likely to possess; on the other hand, the people by initiative, referendum and by the conventions for the creation of constitutions, are extending their authority over the field of legislation. Side by side we see the rise of popular dictators in place of popular legislatures.

Such legislatures, although rudimentary in nature, were not uncommon even in ancient days. The Greeks had the city states. The '*Ecclesia*' was

their assembly of the whole people. The council of five hundred *(Boule)* took the initiative in every '*Decree*'. It was also competent to a member of the '*Ecclesia*' to direct the council to prepare and bring forward a decree on a subject. The '*Ecclesia*' before coming to a decision could call for expert advice or for the opinion of executive departments. Voting took place ordinarily by show of hands; but if the division was close, a count could be taken. Similarly in Rome, the king, council and assembly grew out of the patriarchal family organisation; monarchy was replaced by aristocracy, as consuls, praetors, and senate replaced king; and a strong movement toward democracy was indicated by the widening of assemblies and the increased privileges of plebeians.

In India too, as old as the Vedic period, we had *Sabha* or *Samiti* similar to modern legislatures. '*Vidtha*' is another term often used in the Rigveda. It has been variously interpreted as an 'order', a secular or religious assembly or as a gathering for war. Nothing is known about the composition and constituents of these assemblies. They probably consisted of all the free Aryas or of upper classes alone. The king attended them. Nor are their functions and the scope of their activities clear. From a hymn in the last *Mandala* of the Rigveda it appears that the assembly sometimes acted as a court of justice in matters like disputes about land, cheating at play, recovery of debt, inheritance, theft, assault and murder. Besides justice, the most important function of these *Sabhas* seems to be that of general deliberation. It is difficult to throw definite light on the subject but from certain references in the

Atharva Veda it appears, that the Assembly discussed war, peace, finance and general well-being of the state.

CHAPTER II.

GROWTH OF THE INDIAN CONSTITUTION.

"*Like an anchor of a ship, that is always at sea and never learns to swim.*"

1. Pre-Mutiny Administration.

The growth of the Indian constitution has been influenced to a very great extent by the historical conditions surrounding it. As Seeley puts it, "History without Political Science has no fruit, Political Science without History has no root." The one acts and reacts upon the other. The British came in India as a trading body hence their early administration was really an off-shoot of the East India Company's Commercial activities. The company which started by the Charter of 1600 remained purely a trading corporation till 1764. The successive charters renewed or amplified the same, "conferred on the trading corporation monopolies of trade in the East and for that purpose authorised the acquisition of territories, their fortification and defence by military levies." The company exercised its power through the general Court of Proprietors and the Court of Directors in England and in India

the three settlements at Bombay, Madras and Calcutta were each governed by a president and a council of 10 or 15 members who were the leading commercial servants of the company. All the three settlements were independent of each other in India and there was no central government.

In the midst of "the political chaos in India in the 18th century the company pushed its fortunes vigorously and ultimately became a territorial power. In 1757 the Battle of Plassey made the British the virtual masters of the richest Province in India and transferred the main activities of the company from Madras to Calcutta. The mastery became complete when in 1765 on behalf of the company, Robert Clive obtained from the Emperor at Delhi, the Dewani of the rich and fertile territories of Bengal, Bihar and Orissa. Benares and Salsette fell later. But on account of misrule and oppression inherent to the rule of a commercialised body, the people of England discovered that commercial and administrative business cannot go hand in hand so there was a move to bifurcate the functions." This led to the passing of the Regulating Act of 1773 "for the better management of the affairs of the East India Company as well in India as in Europe." The act provided the nomination by Crown of a Governor-General and four councillors to administer the Presidency of Fort William. The Madras and Bombay Presidencies continued to be governed by a president and a council but they were made subordinate to the Governor-General. They were to communicate all important matters to the Governor-General and were forbidden to wage war or make treaties without his previous consent, although they could

make laws for their provinces. Thus the Board of Directors of the Company was left in charge only of the commercial and financial matters leaving the legislative and administrative work in the hands of the Governor-General in Council. Thus developed a system of double government, the Governor-General administering the company's possession, and the Board of Directors managing commercial and financial matters. The importance of this act in the constitutional History of India lay in the fact that it proclaimed for the first time "the trusteeship of Great Britain for India with a view to the better Government of her people and marks the beginning of direct interference by Parliament in Indian affairs."

But this system of dual government could not last long as there was constant friction between the commercial and civil authorities. It was substituted therefore by Pitt's India Act 1884 which provided that the Governor-General was to be appointed by the Court of Directors of the company instead of by the Crown. The act established in London a Board of Control to represent the Crown which was to superintend, direct and control all acts, operations and concerns which in any sense related to the civil or military government or revenue of the Indian possessions. This Board was composed of several Privy Councillors with a president who eventually became the Secretary of State for India and it exercised the supreme power to superintend the legislation in India.

With more territorial expansion the commercial activities were further cut short. The charter granted in 1793, by which it had been allowed the monopoly of Eastern trade for twenty years expired in

1813. When the question of the renewal of the charter came for consideration, the British public insisted that the trade should be thrown open to all. The company, therefore, lost all trade monopolies except in China. The Charter Act of 1833 withdrew even this monopoly and closed the company's commercial business for good. Henceforth the company became purely political and administrative body, "holding its territories in trust for the Crown." The Act of 1833 raised the Governor-General of Bengal to the position of the Governor-General of India and the direction of whole of the Government was placed in his hand. This was the high watermark of centralisation in legislative, administrative as well as financial affairs. It also gave India her first rudimentary legislature. To the body of Governor-General's Council, for the first time, was added a fourth member for legislative purposes only. It was empowered to legislate on all matters except certain important subjects. But at the same time the Governors in Council of Madras and Bombay were deprived of their law-making power and they had to send the draft of necessary legislation for the approval of the Governor-General in Council, if there was need for it.

The Charter Act of 1853 is a land-mark in the constitutional History of India. It established the first Legislative Council as distinguished from the Governor-General's Executive Council. In addition to the Governor-General and four members of his executive council and the commander-in-chief, six special members, the chief judge and one puisne judge and 4 representatives of the provinces of Madras, Bombay, Bengal and North-West Province were added for legislative purposes alone. The

sittings of the Legislative Council composed of all the 12 members were made public and the proceedings began to be regularly published.

2. Development of the Indian Legislatures.

The discontent 'against the policy of annexation' and other causes resulted in the Indian Mutiny of 1857 and public opinion in England expressed its disapproval of a commercial company administering a vast empire and in response to its wishes the Government of India was transferred to the Crown. In 1858, therefore, the Act "for the better Government of India" was passed. It transferred the control of affairs of the East India Company from the Board of control and the Court of Directors to the Secretary of State for India who was to be responsible to Parliament, acting in concert, in certain cases, with a council. This council was to consist of 15 members and except in some unimportant matters in which the council's advice was binding on the Secretary of State, the Council remained merely an advisory body. The Secretary of State was to submit annually the audited accounts of revenue and expenditure of India accompanied by a statement of moral and material condition and progress of the country. It was also laid down that no revenue of the Government of India were to be applied to defray expenses of any military operation beyond the external frontiers of British India without the consent of the Parliament. The Act, however, did not make any important change in the administration of India. The proclamation of the Queen which followed referred to Lord Canning as the

"First Viceroy and Governor-General of India," which was continued for the succeeding occupants of that office.

The subsequent Parliament Act of 1861 was important in many respects. The legislature created by the Act of 1853 was prepondered by Bengal authorities and the huge extent of the territory for which a single council legislated made it impossible for matters to be handled with adequate information and experience. So the Indian Councils Act of 1861 provided for the creation of Provincial Legislatures.

Thus legislatures were constituted in Madras and Bombay in 1861, in Bengal in 1862, in North-West Province in 1886 and in the Punjab in 1897 and in the Eastern Bengal and Assam in 1905. The local legislatures were to consist of four to eight members in addition to the advocate-general of the province, of whom half were to be non-officials nominated by the Governors. But there were rigid restrictions placed upon the powers of these councils. Before 1833 the law enacted by these councils was in itself complete, but from 1861 the previous sanction of the Governor-General in Council was made requisite to introduce certain measures and all acts of the local legislatures required the assent of the Governor-General. They were also not authorised to legislate on subjects like taxation, currency, post office etc. The Governor-General thus became the head of all legislative authority in British India.

In the Governor-General's Legislative Council the number of additional members in addition to the members of the council were to be not less than

6 and not more than 12. " They were to be nominated for two years each, and half of them were always Indians. They could make laws for all persons, all courts and all places and things in British India. Private members were not allowed to introduce bills except with the previous sanction of the Governor-General. The Governor-General's assent was necessary for all legislations." The Crown through Secretary of State for India could disallow any piece of legislation.

But the establishment of universities and the Indian National Congress led to a demand for some more political concession. As a result of this the Indian Councils Act of 1892 was passed. "Though originally it was intended to introduce elected representation to the councils yet as a matter of party compromise in the Parliament, the principle of nominated representation was adhered to." But the nominated members in both the central and provincial legislatures were nominated on the recommendation of various bodies e. g. chamber of commerce, provincial legislature (for central legislature), local bodies, land-holders, university etc. It raised the maximum number of nominated representatives in the Governor-General's Council to 16 and in the case of provincial legislatures the number fixed for Bombay and Madras was raised from 8 to 10. The United Provinces received a council of 15 members and the Punjab and Burma were allotted 9 members each. It also provided the right of asking questions after due notice provided such questions were not argumentative, hypothetical and defamatory. No discussion was allowed on any reply and the president of the council reserved the right of disallowing

a question. The right to discuss the budget was also conceded but no member was allowed to propose any resolution or to ask the House to devide upon it. The budget was to be discussed as a whole and not item by item. The act widened the opportunities of non-official members for criticism, suggestion, remonstration and enquiry.

3. MINTO-MORLEY REFORMS.

The Minto-Morley Reforms of 1909 took the councils a step further. The principle of elective representation was for the first time introduced in the Indian Councils; but Muhammadans were to elect their own representatives in separate constituencies. The chamber of commerce, land-holders and other special interests were given direct representation. The general constituencies themselves were constituted out of municipalities and district boards. But with all this the principle of elective representation on councils was an important change. The maximum number of members fixed for the central legislature was 60, that for the major provinces 50 and for the rest 30.

The councils were thus constituted of officials, nominated non-officials and elected representatives. In all the provincial councils, the official votes were in minority, though the government with the help of nominated members, could in all provinces except in Bengal, out-vote the elected members. In the central legislature the Government had, at all times, a clear majority.

The powers exercised by the previous legislatures were continued, and the enlarged legislatures

were not only given the right to discuss the budget but also to move resolutions on it. They could also move resolutions as recommendation to government on matters of general interest. It also gave the members wide opportunities for influencing the administration in general.

An integral part of the reforms of 1909 was the appointment of Indian members to the Executive Councils of the Governor-General and provincial Governors. This was a radical change. Lord Morley also appointed an Indian to serve on the Council of the Secretary of State. "The appointment of Indians to the highest offices in government was very important because it gave a recognition of the principle of the civil as against the official control of the departments as also against the principle of racial discrimination in high appointments which was hitherto followed."

CHAPTER III.

THE REFORMED CONSTITUTION (1919)

"Dyarchy is obviously a cumberous, complex, confused system having no logical basis, rooted in compromise and defensible only a transitional expedient."

—*Sir William Marris.*

1. The Declaration of Policy.

The Minto-Morley Reforms of 1909 gave India only a rudimentary and incomplete form of Parliamentary government. In essence no substantial political progress was achieved. The executive still remained supreme instead of being responsible to the legislature. The enlargement of the councils although led to considerable popular influence but unexpected weakness manifested in the course of their working. " The official members formed a solid block and the non-officials could do nothing but to criticise. Moreover, the growing discontent of the people led to the necessity of making some concession to their roused political consciousness." This was all the more necessary in view of the great services of Indians to the cause of the allied powers in the Great War. All these causes led Mr. E. S.

Montague, the then Secretary of State for India, to *make the historic declaration of 20th August 1917.* It begins as follows, "The policy of His Majesty's government with which the Government of India are in complete accord, is that of increasing the association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India, as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible,...... I would add that progress in the policy can only be achieved by successive stages. The British Government of India on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be the judges of the time and measure of each advance and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which, it is found that confidence cannot be reposed in their sense of responsibility. Ample opportunities will be offered for public discussion of the proposals which will be submitted in due course to Parliament."

2. The Main Features.

To implement this policy the Government of India Act 1919 was passed. The chief features of the New Act were that direct election was for the first time introduced in the legislatures. Secondly the Legislative Assembly had a clear elected majority. The powers of the Legislative Assembly were

considerably enlarged. Besides the right of moving resolutions and interpellating the government, the Legislative Assembly was given the right to move adjournments, to discuss urgent matters of public importance, and what was most important, was given an effective control over a large portion of the budget. Under Section 25 of the Act, supplies were to be voted in the form of demands for grants, and except for certain heads declared by the government to be non-votable, the Assembly had in ordinary circumstances, control over the items presented for its approval.

Another important change introduced in the central government was to increase the number of Indian Executive Councillors. Before the Reforms the Governor-General's Council consisted of one Indian member out of 6 ordinary members. After 1919, 3 out of 6 were Indians. This is meant as a fulfilment of that part of the declaration of 1917 which spoke of the increasing association of Indians in every branch of Government.

The central and provincial subjects were ear-marked, local government, education, sanitation, public health, hospitals, asylums, public works, development of industries, agriculture, veterinary and co-operative societies were provincial transferred subjects; while land, irrigation, famine, justice, police, prisons, factories etc., were the provincial reserved subjects. Other subjects were entrusted to the central Government. In finance too a distinction was drawn; the centre received income tax, railway receipts, posts and telegraphs, customs, salt tax, opium proceeds; while the provinces got land-revenue, excise, irrigation, forests, stamps and

registration. The provinces, however, were bound to pay contributions to the centre, until relieved of these by increase in central receipts.

3. THE CENTRAL GOVERNMENT.

The act entrusted the administration of India to a Governor-General in Council on the spot. But in all matters the authority of the Parliament was supreme and was exercised through the Secretary of State for India who is a member of the British Cabinet. The Governor-General in Council with this limitation is vested "with all the powers of government". His Council consists of 6 ordinary members and the Commander-in-Chief who is an extraordinary member. The main departments of which the members hold portfolio are: Revenue, Law, Home, Finance, Commerce and Industry and Education, besides the Foreign and Political which is directly under Governor-General.

The Indian Legislature consists of the Governor-General and two chambers—Council of State and the Legislative Assembly. Ordinarily no bill is deemed to have been passed unless it is agreed to by both the houses and unless it receives the assent of the Governor-General.

The maximum number of members in the Council of State is 60 of whom not more than 20 should be officials. In 1931 it consisted of 34 elected, 6 nominated and 20 officials. The original purpose for creating the chamber was to develop a body of elder statesmen. The system of election is by separate electorate. The duration of the period of each member is 5 years. The Governor-General

however can extend or cut short the life of the House. The President of the House is appointed by the Governor-General from among its members, although recently it was given an elected president.

The Legislative Assembly is to consist of 140 members but its number may be increased or decreased. At least five-sevenths of the members of the Assembly are elected and at least one-third of the other members are non-officials. The duration of its life is 3 years. But the Governor-General has the power to extend its life or curtail it. It may not be out of place to mention that in the Dominions of Canada, Australia, and South Africa, the Governor-General can dissolve but cannot extend the life of the House. Within 6 months from dissolution or within nine months with the sanction of the Secretary of State for India, the Governor-General is bound to fix the date of the next election of the House. In 1931 it consisted of 144 members of whom 103 were elected and 41 were nominated of whom 26 were officials. The distribution of seats of elected members is—Bengal 17, Bombay, Madras, United Provinces 16 each, Punjab, Bihar and Orissa 12 each, Central Provinces 5, Assam and Burma 4 each and Delhi 1. Of the 104 elected members, Non-Muslims number 47, Muslims 30, Europeans 9, Land-holders 7, Indian Commerce 4, Sikhs 2, Non-Europeans 3, General 2 The method of representation is by special interests and communal basis. The first President of the Legislative Assembly was appointed by the Governor-General for 4 years. Thereafter this office was filled by the Assembly from amongst its members. Besides the President

there is also a Deputy President elected by the house. But election of both the President and Deputy-President requires the sanction of the Governor-General.

4. Dual Government in the Provinces.

The provinces in India were classified into 10 major and 5 minor provinces. The major provinces are governed by the Governor and his cabinet consisting of executive councillors and ministers and each has a Legislative Council but in the minor provinces there is no Legislative Council except in Coorg and their administration is carried on by a Chief Commissioner.

The Act of 1919 prescribes the number of members of the Legislative Councils of the major Provinces as follows :—

Bengal	145	Bihar and Orissa	98
Madras	118	Punjab	83
United Provinces	118	Central Provinces	70
Bombay	111	Assam	53
Burma (*created in 1923*)	103	N. W. F. Province (*created in 1932*)	40

Not more than 20 per cent. of the members of each Council should be officials, at least 70 per cent should be elected. The Governor of a province is not a member of the Council but he can address it.

Provinces were the sphere where responsible government was first made to work. In fact the Montague-Chelmsford Report clearly stated that the provinces should be emancipated from the control

of the Central Government before Parliamentary responsibility in the provinces may be introduced. The object of the Act was therefore the relaxation of the authority of the centre over the provinces. The chief features of the reforms from which the name dyarchical government arises is the separation of functions into two classes, one known as the reserved departments, which the Governor with the help of the Executive Council administers under the control and supervision of the Governor-General and Secretary of State; and the other known as the transferred departments which are administered by the Governor acting on the advice of the ministers responsible to the Legislative Council of the province. The purpose of this division was to introduce responsibility in certain nation-building departments and to give legislatures the right to control and direct their policy.

As far as transferred subjects are concerned, the control of the Secretary of State is much relaxed and is exercised only for the following purposes:—

1. To safeguard the administration of central subjects,

2. to decide questions arising between two provinces in cases where the provinces concerned fail to arrive at an agreement,

3. to safeguard imperial interests,

4. to determine the position of the Government of India in respect of questions arising between India and other parts of the Bsitish Empire; and

5. to safeguard the due exercise and performance of any powers and duties passed by or imposed on the Secretary of State or the Secretary

of State in Council under Act, [Section 29A, Section 30 (1a), Part VII A, of the Government of India Act 1919 or of any rules made thereunder.]

• So far as the central government was concerned section 45A (3) of the Act laid down that the "power of superintendence, direction and control over local governments vested in the Governor-General shall, in relation to the transferred subjects be exercised only for such purposes as may be specified in rules made under this Act." The Devolution Rules limited this control to the first, second and fifth classes of the rules which the Secretary of State made restricting his own authority. Within these limits the provincial government in the transferred departments is responsible to the legislature and is administered by ministers responsible to the Council.

The provincial councils enjoy much larger powers than the central legislature in all matters excepting legislation. The legislative authority of the provincial councils is restricted in two ways by the previous sanction of the Governor-General in Council which is required in certain specific matters, and by the provincial character of the acts passed by the councils. The Governor has also the right of certifying, of vetoing or of reserving for consideration of the Governor-General any bill passed by the provincial council. The power of certification is exercised when a bill or its clause effects the safety or tranquillity of a province, and in such a case the Governor can direct that no proceedings shall be taken thereon. The Governor has also the power to withhold the assent from a bill and such a bill shall not have the effect of law.

Subject to these restrictions, the legislative powers in the provinces are in the hands of the council. The financial authority of the provincial councils over the transferred subjects are complete. The council may reduce or omit any demand made on behalf of the transferred departments. In case of reserved departments, however, the Governor is given the right of certifying that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subjects. There are also 4 important heads on which the council's vote is not required for expenditure. These non-votable items are : (1) the provincial contribution to central government (2) interest and sinking fund charges on loans (3) expenditure of which the amount is prescribed by law (4) the salaries and pensions of High Court Judges and the Advocate-General of the province, if any.

5. Revisionary Provision.

The Act also provided for the appointment of a commission for the purpose of inquiring into the working of the system of government, the growth of education, the development of representative institutions in British India, and matters connected therewith, and of reporting as to whether and to what extent it was desirable to establish the principle of responsible government, or to extend, modify or restrict the degree of responsible government existing therein, including the question whether the establishment of second chambers in the provinces is or is not desirable. Originally it was provided to appoint this commission 10 years after the

passing of the Government of India Act 1919. But later by the Government of India (statutory commission) Act 1927 the words 'within' were substituted for 'after' and the commission was consequently appointed in November 1927.

CHAPTER IV.

THE NEW CONSTITUTION.

" *Happy thrice happy everyone*
Who sees his labour well begun."

1. THE GOVERNMENT OF INDIA ACT 1935.

The dyarchical system introduced in the provinces by the Government of India Act 1919 resulted in a complicated system of administration. As Sir William Marris puts it, " Dyarchy is obviously a cumberous, complex, confused system having no logical basis, rooted in compromise and defensible only as a transitional expedient." In 1924 therefore the Muddiman Committee enquired into its working and later the Statutory Commission appointed in 1927 went into the question thoroughly and published their report in 1929. Subsequently the Round Table Conference was called to formulate a constitution for India. The fisrt Round Table conference met in November 1930. The two subsequent conferences further discussed the proposals and these proposals were finally published in the form of reports.

Following the report of the three Round Table

Conferences, the British Government issued a white paper (CMD. 4268) setting out its proposals on Indian Constitution Reform. A Joint Select Committee of both Houses of Parliament was then set up to consider the proposals in consultation with Indian representatives and to report upon them. The Committee presented their Report in October, 1934 and it was upon their recommendations that the new Government of India Act 1935 was passed. It received Royal assent on August 2, 1935. It may be interesting to note that on this very date i. e. August 2, Royal assent was also given to the Bill providing for the assumption of the Government of India directly by the Crown in 1858. The Act is the longest in the history of Parliament and 61 parliamentary days were occupied. The Act consists of 478 sections and 16 schedules.

For convenience the Act was ordered by the Government of India (Reprinting) Act, passed on December 20, 1935 to be reissued as Government of India Act 1935 and Government of Burma Act 1935.

2. The Indian Federation.

The most outstanding feature of the new Act is the conversion of India from a unitary state to a federation. In conformity with the White Paper and the Report of the Joint Parliamentary Committee, the Act provides for the establishment, by a proclamation of His Majesty, if an address in that behalf has been presented to him by each House of Parliament, of a Federation of India under the Crown. The units of the federation will be the Governor's

provinces[1] and the chief commissioner's provinces and such Indian states[2] whose rulers signify their desire to accede to the Federation by a formal Instrument of Accession.

Federation in its perfect form is that form of state which forms a single state in relation to other nations, but which consists of many states with regard to its internal government. The underlying idea of a federation is to give a unified front to foreign states; while its units are created as a matter of administrative convenience. In other words, Federation is a natural constitution for a body of states which desire union and do not desire unity. The central authority in a federation represents the whole, and acts on behalf of the whole in external affairs and in such internal affairs as are held to be of common interest; while its units look after matters of local importance within the sphere alloted to them by the Constitution. Such federations exist in United States of America, Canda and Australia. A unitary state, however is one in which the governmental authority is fundamentally vested in one single organizatian; and all local units, if any, owe their existence to, and receive their authority from this body. In unitary governments, therefore, all the local units are creations of the central government as a matter of convenience and their existence and their powers may be modified or destroyed at its pleasure, while in the Federation neither the federal government nor the federal units can legally modify, destroy or encroach upon the other without a change in the Constitution.

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1. These have been described in Chapter 6.
2. These have been described in Chapter 20.

Federation elsewhere has usually resulted from a paet entered into by a number of political units each possessed of sovereignty or at least of autonomy, and each agreeing to surrender a defined part, of their sovereignty or autonomy to the new central organisation for common good. India, however, has little in common with the historical precedents of this kind. The British Indian provinces are not even autonomous, for they are subject both to the administrative and legislative control of the Government of India and the Secretary of State in whom are vested powers of control over "all acts, operations and concerns which relate to the Government or revenues of India." The provinces, therefore, have no original or independent power to authority to surrender. The States, on the other hand, though they are under the suzeranity of the King-Emperor from no part of His Majesty's dominions. Their contact with British India has hitherto been maintained by the conduct of relations with their rulers through the Governor-General in Council. Moreover, since Parliament cannot legislate directly for their territories, the range of authority to be conferred upon the Federal Government and Legislature in relation to the States must be determined by agreement with their rulers; and the States have made it plain that they are not prepared to transfer to the Federal Government the same range of authority in their territories as it is expedient and possible to confer upon it in relation to the Provinces. The position will, therefore, necessarily be that unlike other federations, in the Indian Federation the range of powers to be exercised by the Federal Government and Legislature will differ in relation

to the two classes of units which compose it. Yet federation was the only solution for such a vast country as India comprising an area of 15,70,000 square miles with a population now approaching 34,00,00,000[1] excluding Burma, inhabited by many races and tribes speaking a dozen main languages and over 200 minor dialects; consisting of 23,90,00,000 Hindus, over 7,70,00,000 Muhammadans and 60,00,000 Christians; and having about 600 native states with an annual income of about 50 crores[2] and spreading over an area of 7,00,000 sqr. miles inhabited by 8,00,00,000 souls. At the same time federation was advantageous to both the Indian states and British provinces. The princes felt that in such a federation they will have a voice in such issues as defence and customs policy, for in the existing regime they have almost no say in these matters while the introduction of high protection has begun seriously to affect state interests. The provinces, on the other hand, gained autonomy which they never possessed before and got a legal basis.

The scheme of federation will become operative only after states representing at least 52 out of 104 seats alloted to the states in the Council of State and having half the population of states have declared their decision to accede to the Federation. Accession depends on the free determination by the ruler of full age and not under any incapacity. The terms of accession may vary in each case, but it is

1. It may be interesting to note that the total population of British Empire is 494,770,000. The total world population is estimated at 1,850,000,000. India is 1/5 of the entire population of the world and thirteen times that of the overseas Dominions put together. The British Empire consists of 240 million Hindus; 100 million Muhammadans; 80 million Christians; 12 million Buddhists; 4 million Sikhs, 750,000 Jews and the remaining with minor religions.

2. The total revenue of central and provincial Governments of British India amounts to about £157,000,000 and the trade about £450,000,000 per annum.

essential that a state should accept the fundamental principles of Federation; choice is given only in the power to accept or reject certain subjects. The acceptance of an accession rests with the Crown but 20 years after the inauguration of the Federation the Crown may accept it only if both Houses of Indian Legislature so desire.

The first step requisite in the transfer of a unitary to a federal polity is to define by statute the jurisdiction and competence of the Federal and local authorities respectively. In the case of state members of the Federation, this will be determined by the Instrument of Accession executed by the ruler thereof. The provinces, however, are made autonomous with a defined and exclusive share of Government.

3. The Secretary of State.

The authority of the Crown is to be exercised by the Secretary of State for India who will continue to be a member of the Cabinet of Parliament, to which body he would be responsible for his action. The Act abolishes the Council of Secretary of State and makes him a minister of the Crown individually responsible for all the authority vested in the Crown in relation to India. The Federation and the provinces are bound under section 157 of the Act to supply the Secretary of State for India with funds to enable him to make such payments as he may have to make in respect of any liability which falls to be met out of the revenues of Federation or of the provinces as the case may be.

4. Federal Executive.

The Governor-General is at the head of the Federation as representative of the Crown and will also exercise the powers of the Crown in relation to the states outside the federal sphere. The executive authority of the federation is given in Section 8. It covers :—

(a) the matters with respect to which the Federal Legislature has power to make laws ;

(b) the raising in British India on behalf of the Crown of naval, military and air forces and the governance of His Majesty's forces borne on the Indian establishment ;

(c) the exercise of such rights, authority and jurisdiction as are exercisable by the Crown by treaty, grant, usage, sufferance, or otherwise in realtion to the tribal areas.

Two important limitations are imposed on this authority. Firstly the federal executive authority does not, save as expressly provided in the Act, extend in any province to matters with respect to which the Provincial Legislature has power to make laws. Secondly in relation to a State which is a member of the Federation, the executive authority will only extend to such matters as the Ruler has accepted as falling within the federal sphere by his Instrument of Accession. The executive authority of the Ruler of a Federated State is, however, to continue to be exercisable in relation to matters with respect to which the Federal Legislature has power to make laws for that State. This provision is not to apply when the executive authority of the Federation becomes exercisable in the State to the

exclusion of the executive authority of the Ruler by virtue of a federal law.

The Governor-General aided and advised by a council of ministers, not more than 10, responsible to the Federal Legislature is the executive power and authority of the Federation. The ministers are chosen and summoned by him and hold office during his pleasure ; but if a minister is not a member of either House of the Federal Legislature for six months he ceases to be a minister.

The salary of a minister, which may not be varied during his term of office, is determined by Federal Act, but until such time, is determined by the Governor-General. It is provided that the question whether any and, if so, what advice was tendered by ministers to the Governor-General may not be enquired into in any court. Certain departments, namely those concerned with Defence, External Affairs, Tribal Areas and Ecclesiastical Administration will be out of the purview of the ministers. By tribal areas is meant the frontier lands of India and Baluchistan which are not parts of British India or Burma or any Indian or Foreign State although they form a British sphere of influence. The reserved departments will be administered by the Governor-General with the help of not more than 3 counsellors whose salaries and conditions of service will be prescribed by His Majesty in Council. The responsibility of the Governor-General with respect to these departments would be to the Secretary of State and thus ultimately to Parliament.

The Governor-General may also appoint a financial adviser whose function will be to advise

him in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government and an Advocate-General to perform such functions and advising the Federal Government and other duties as may be assigned to him. The Advocate-General has audience in all British Indian courts and in federal issues in federated states courts.

5. SPECIAL RESPONSIBILITIES OF THE GOVERNOR-GENERAL.

The special responsibilities of the Governor-General are of two kinds.

1. In the exercise of his functions the Govrenor-General shall have the following special responsibilities, that is to say:

(a) the prevention of any grave menace to the peace or tranquillity of India or any part thereof;

(b) the safeguarding of the financial stability and credit of the Federal Government;

(c) the safeguarding of the legitimate interests of minorities;

(d) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests;

(e) the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of Government of India Act 1935 are designed to secure in relation to legislation;

(f) the prevention of action which would subject goods of United Kingdom of Burmese origin imported into India to discriminatory or penal treatment ;

(g) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof ; and

(h) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under the Government of Indian Act 1935 required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

2. If and in so far as any special responsibility of the Governor-General is involved, he shall in the exercise of his functions exercise his individual judgment as to the action to be taken.

6. The Provincial Autonomy.

The authors of the Montague-Chelmsford Report wrote : " The provinces are the domain in which the earlier steps towards the progressive realisation of responsible government should be taken." The Statutory Commission also observed : " It was our intention that in future each province should be as far as possible mistress in her own house." The Joint Parliamentary Committee Report accepted the principle of provincial autonomy which they pointed out had the greatest measure of support from every quarter.

By provincial autonomy is meant the Govern-

ment of a province by the people freed, as far as practicable, from the control of the central power. It means not only the right of a province to make its own laws and administer its own affairs, but also responsibility of the executive to the provincial legislature and freedom within defined limits from the control of the central government and central legislature.

The provincial head is the Governor who exercises executive authority on behalf of the Crown with the help and advice of a council of ministers, subject to his retention of special powers and responsibilities. The provincial ministers are to be chosen by the Governor of the province and hold office during his pleasure. They are to have the same duties in relation to the affairs of the province as the federal ministers have in respect of the federal affairs. All the provincial subjects are transferred to the control of minister.

7. Special Responsibilities of the Governor.

The Governor has the following special responsibilities in which he is to act at his discretion subject to the control of the Governor-General :

(a) The prevention of any grave menace to the peace or tranquillity of the province or any part thereof ;

(b) The safeguarding of the legitimate interests of minorities ;

(c) The securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved

for them by or under the Act, and the safeguarding of their legitimate interests ;

(d) The securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of the Act (which deals with discrimination) are designed to secure in relation to legislation ;

(e) The securing of the peace and good government of areas which by or under the provisions of the Act are declared to be partially excluded areas ;

(f) The protection of the rights of any Indian States and the rights and dignity of the Ruler thereof ; and

(g) The securing of the execution of order or directions lawfully issued to him under Part VI of the Act (which deals with administrative relations) by the Governor-General in his discretion.

It should be noted that a Governor, unlike the Governor-General, has no special responsibility for :—

(1) the safeguarding of the financial stability and credit of either the Federal Government or his province ;

(2) the prevention of action which would subject the goods of the United Kingdom or of Burmese origin imported into India to discriminatory or penal treatment ;

(3) the securing of the due discharge of functions with respect to reserved departments.

The Governor of the Central Provinces is also bound to secure a fair share of revenues to be spent on Berar ; the Governors of Bengal and

Assam have a responsibility for the excluded arears[1] in those provinces, the Governor of Sind for the Lloyd Barrage Scheme, and the Governor of the North-Western Frontier Province for the unimpeded performance of his duties as Agent of the Governor-General in respect of the tribal areas. All the Governors are bound to use individual judgment in respect of any changes of rules affecting the organisation or discipline of police forces. Apart from the special powers, the Governor may make rules requiring ministers and secretaries to bring to his notice any matter which may affect his special responsibilities.

The Act also provides that if it appears to the Governor of a province that the peace or tranquillity of the province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Governor, are intended to overthrow the government as by law established, the Governor may, if he thinks that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall, to such extent as may be specified in his direction, be exercised by him in his discretion and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly.

In order to further this object, section 58 provides that the Governors, in their discretion shall make rules for securing that no records or information relating to the intelligence service dealing

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1. These areas have been defined in the Government of India (Excluded and Partially Excluded areas) order in Council 1936 published in the Gazette of India of the 21st March, 1936.

with terrorism are to be disclosed to anyone other than such persons within the provincial Police Forces as the Inspectors General or the Commissioners of Police may direct, or such other public officers outside those Forces as the Governors themselves may direct.

Provision is also made for the appointment of an Advocate-General for the province whose duty it will be to give advice to provincial Government upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred to or assigned to him by the Governor.

Although provincial autonomy and All-India Federation are laid down in the same Act it is provided that provincial autonomey will precede the change in the centre, and, as such, the provisions of Part XIII of the Act shall apply between the commencement of provincial autonomy and the establishment of Federation.[1]

8. ADMINISTRATIVE RELATIONS.

The executive authority of the provinces and states must be so exercised as not to infringe the federal law. The federal acts may impose duties to the units subject to the payment of additional staff to be decided by arbitration, if necessary. The Governor-General has power to give directions to rulers if they act so as to prejudice the exercise of the executive authority of the Federation or fail to carry out obligations as to administering federal

1. Also see the Government of India (Commencement and Transitoy Provisions) order 1936 published in the Gazette of India of 25th July 1936.

laws. Still wide powers exist as regards the provinces where Governors are instructed to use their executive power in any way necessary to give effect to the Federal law and to prevent menace to the peace or tranquillity of India. Moreover on addresses from the provinces an Inter-Provincial Council may be established to deal with inter-provincial disputes and to discuss matters of common interest.

9. The Federal Court.

In a constitution created by the federation of a number of separate political units and providing for the distribution of powers between a Federal Legislature and Executive on the one hand and the Legislatures and Executives of the Federal units on the other, a Federal Court has always been recognised as an essential element. Such a Court is, in particular, needed to interpret authoritatively the Federal Constitution itself. Thus the ultimate decision on questions concerning the respective spheres of the Federal, Provincial and State authorities is entrusted to the Federal Court independent of Federal,Provincial and State-Governments.

The court shall consist of a chief justice of India and such number of other judges as His Majesty may deem necessary. It will have :—

1. An original jurisdiction.
2. An appellate jurisdiction in appeals from the High Courts in British India.
3. An appellate jurisdiction in appeals from the High Courts in Federated States.

Section 208 of the Act provides that an appeal may be brought to the Judicial Committee of the Privy Council from a decision of the Federal Court as follows :—

Without leave—from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of the Act or of an order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made under Part VI of the Act in relation to the administration in any state of a law of the Federal Legislature.

By leave of the Federal Court or by His Majesty in Council—in any other case.

10. The High Commissioner.

The office of the High Commissioner for India in the United Kingdom is to continue. He may also act for Burma. His functions are those of non-political character. He acts as an agent to the central Government and the various provincial governments and procures stores for them, furnishing trade information and dealing with the education of the Indian students. Under the new constitution he would be controlled by the Governor-General in his individual judgment, and may be authorised to act for a province, a federated state or Burma. Sub-section 2 of Section 157 of the Act provides that the Federation and every Province shall secure that there are from time to time in the hands of the Secretary of State and the High Commissioner

sufficient moneys to enable payment to be made of all pensions payable out of the revenues of the Federation or the Province, as the case may be, in the United Kingdom or through officers accounting to the Secretary of State or to the High Commissioner.

11. The Federal Railway Authority.

The executive authority of the Federation in respect of regulation, construction, maintenance and operation of railways is to be exercised by a Federal Railway Authority. The Authority is to act on business principles, due regard being paid to the interests of agriculture, industry, commerce and the general public. A railway Tribunal is also to be set up to adjudicate against objections raised with respect to the construction and reconstruction of the railways and other complaints against the Railway Authority. For this purpose the Railway Tribunal is authorised to make orders.

An appeal from the decision of the Railway Tribunal lies to the Federal Court on a question of law and the judgment of the Federal Court is final. A Railway Rates Committee may be appointed to advise the Governor-General in case of complaints by users against the rates fixed by the Authority, and his recommendation is necessary for any bill regarding rates which it is desired to propose.

12. The Reserve Bank.

The Reserve Bank is to regulate the issue of Bank notes and keeping of reserves with a view to securing monetary stability in British India and

generally operate the currency and credit system of the country. The general superintendence and direction of the Reserve Bank is entrusted to a Board of Directors.

Section 152 of the Act provides that the functions of the Governor-General with respect to the following matters shall be exercised by him in his discretion, that is to say—

(a) the appointment and removal from office of the Governor and Deputy Governors of the Reserve Bank of India, the approval of their salaries and allowances, and the fixing of their terms of office ;

(b) the appointment of an officiating Governor or Deputy Governor of the Bank ;

(c) the supersession of the Central Board of the Bank and any action consequent thereon ; and

(d) the liquidation of the Bank.

In nominating directors of the Reserve Bank of India and in removing from office any director nominated by him, the Governor-General shall exercise his individual judgment.

13. SEPARATION OF BURMA AND ADEN.

The Act provides for the separation of Burma and Aden from the rest of India. The new constitution of Burma is dealt with in a later chapter.

The Government of Aden may be regulated by an order in Council. According to the colonial usage such an order may delegate legislative power to any person in Aden, but without impairing in any way the right of the Crown in Council to legislate at the same time. The order may provide

for appeal from Aden Court to an Indian High Court, probably Bombay High Court and the expenses for such a service will be paid to the Government concerned. Further appeals may lie to His Majesty in Council. The property held by the Government of Aden is vested in the Crown.

14. Amendment of the Constitution.

Amendment of the constitution by the Federal and Provincial Legislatures is generally forbidden but some changes are allowed to be made by order in Council with the assent of the British Parliament in certain matters on the request of the Federal or provincial legislatures, not earlier than 10 years from the inauguration of the Federation or provincial autonomy. Such matters are: (1) the size and composition of the chambers of federation and the choice or qualification of members but not so as to change the relative proportions between the Council of State and the House of Assembly or between the British India and Indian States; (2) the number of chambers in the provincial legislatures, their size, composition, or method of choosing or the qualifications of members; (3) the substitution of literary in lieu of higher educational qualifications for women's franchise, or the entry of names of qualified women without any application; (4) any other amendment as to qualification of voters. The changes in head 3 may however be made at any time on the condition that the request is so made by a province. But before issuing such orders, it is necessary that the views of the

respective governments and legislatures may be obtained. As stated above all such orders require the sanction of Parliament except in cases of emergency when the order may be issued but will lapse unless so approved at the earliest opportunity.

15. FAILURE OF CONSTITUTIONAL MACHINERY.

The Act contains special provisions enabling Governor-General to act promptly in case of a break-down of the constitutional machinery. Section 45 provides that if at any time the Governor-General is satisfied that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Act, he may by proclamation :

(a) declare that his function shall be to such extent as may be specified in the proclamation be exercised by his discretion.

(b) assume to himself, all or any of the powers vested in or by any Federal body or authority.

But such a proclamation shall not affect the Federal Court and any proclamation under this power must be laid before Parliament and shall cease after six months, unless approved by a resolution of both Houses from time to time. The suspension of the constitution, however, should not exceed 3 years ; thereafter new provision must be made by Parliament.

Similar provisions have been made in the case of the provinces where the Governor can also assume powers under Section 93 ; but High Courts are excluded from this provision.

CHAPTER V.

THE FEDERAL LEGISLATURE

"How to transmit the force of individual opinion and preference into public action. This is the crux of popular institution."—A. B. Hart.

The Federal Legislature is to consist of His Majesty, represented by the Governor-General and two chambers, the Council of State and the House of Assembly commonly known as the Federal Assembly.

1. The Council of State.

The Council of State is to consist of not more than 260 members of which 156 are to be representatives of British India, and not more than 104 representatives of Indian States. Out of the British Indian seats 150 are to be elected representatives as detailed in appendix 1, while 6 are to be nominated by the Governor-General in his discretion. The representation of Indian States is to be in accordance with the long Table of Seats for the Council of State and the Federal Assembly in the First Schedule of the Government of India Act 1935.

The Council of State is to be a permanent body, not subject to dissolution, but, as near as may be,

one-third of its members are to retire every third year. Thus the normal life of membership of each member is 9 years.

The White Paper and the Report of the Joint Select Committee suggested indirect election to the Council of State for British Indian seats, but Parliamentary criticism of this suggestion resulted in the adoption of the principle of direct election to this chamber. The members of the Council of State are now to be elected by Hindus, Sikhs and Muhammadans voting in territorial constituencies. An electorate of 100,000 is estimated. The Anglo-Indians, Europeans and Indian Christians, however, are to be chosen by indirect election i. e. through electoral colleges of the members of the provincial legislatures of that community.

The representatives of the states in the Council of State are to be appointed by the Rulers of States ; but no person is to be so appointed unless he is a British subject or ruler or subject of an Indian state which has acceded to the Federation.

The President and Deputy President of the Council may be chosen from amongst its members and their salaries are to be fixed by an Act of Federal Legislature. They may be removed from the office by an adverse vote for which 14 days' notice is required.

2. THE HOUSE OF ASSEMBLY.

The House of Assembly is to consist of not more than 375 members out of which 250 are to be representatives of British India and not more than 125 representatives of Indian States. All the

British Indian representatives will be elected in accordance with appendix No. II, while the state-representation will be as detailed in the long table of seats regarding representatives of Indian States in the first schedule to the Government of India Act, 1935. The House of Assembly, unless sooner dissolved is to continue for 5 years from the date appointed for its first meeting.

The system of election to the House of Assembly in British India has been changed. Direct election to the Assembly has been replaced by indirect election. The reason why the indirect election has been preferred is said to be that if the constituencies were to be of reasonable size, the resultant chamber would be unmanageably large ; if, on the other hand, the chamber were of a reasonable size, the constituencies on which it was based would necessarily be enormous. Hence under the Act the Federal House of Assembly is to be in the main, elected by the Provincial Assemblies according to proportional representation with single transferable vote in the case of Hindu, Muhammadan and Sikh seats. The seats of Europeans, Anglo-Indians, Christians and women are to be filled in by the representatives of those groups in the Provincial Assemblies voting in ad-hoc electoral colleges. Persons to fill the seats alloted to representatives of commerce and industry, land-holders and representatives of labour are to be chosen by their communities. Special provision is made as to the election of representatives for the Chief Commissioner's provinces.

The representatives of the states are to be appointed by their rulers as in the case of the Council

of State and their allocation of seats in the Federal House of Assembly is to be on the principle that the number of seats alloted to each state of group of states should be proportionate to their population.

The House of Assembly may choose for amongst its members a Speaker and a Deputy-Speaker who will preside at its sittings and who will vacate his office if he ceases to be a member of the Assembly. He may be removed by a vote of no-confidence for which 14 days' notice is necessary. The salaries of both these officers will be fixed by a Federal Act.

The Governor-General is not a member of any of the houses of the Federal Legislature but he has a right to send message or address to either chamber of the Federal Legislature or both the chambers jointly and for that purpose may require the attendance of the members. The chambers of the Federal Legislature shall be summoned to meet at least once a year and more than 12 months shall not pass between two consecutive sittings. The Ministers, the Counsellors and the Advocate-General have a right to speak and take part in the proceedings of either House but they can vote only in the House of which they are members.

The quorum of each House of legislature is one-sixth of its strength. English is the official language of the Legislature but members may be permitted to use other languages. All questions at a sitting or joint sitting of the chambers are to be determined by a majority of votes of the members present and voting other than the member presiding

who is to cast his vote only in case of equality of votes.

Under Section 27 of the Government of India Act 1935, if a person sits or votes as member of either chamber when he is not qualified or is disqualified for membership thereof, or when he is prohibited from doing so by the provisions of sub-section (3) of Section 26, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Federation.

A chamber of the Federal Legislature has power to act notwithstanding any vacancy in its membership. The validity of the proceedings of the legislature is not to be questioned merely because it was later discovered that some person who was not entitled to vote or sit has so taken part in the proceedings.

A member of the Federal Legislature may resign his office to the Governor-General. If for 60 days a member is absent from the chamber of which he is a member, without the premission of the chamber, the chamber may declare his seat to be vacant.

3. Communal Representation.

In accordance with the decision of the British Government, commonly known as the Communal Award, the system of separate electorate has been retained, and it has been further extended to women, Christians, Anglo-Indians, Europeans, Commerce and Industry, Land-holders and Labour. The depressed classes amongst the Hindus will

have a special method of election discussed in chapter VII.

It is said that the system of communal representation protects the interests of the particular community and secures better representation of that community and that it also welds the community more closely and affords greater opportunities of education and service. But a considerable section in the country is against separate representation. Even the Muddiman Committee (Majority) Report observed that communal representation is an obstacle to political advancement but they considered "the abolition of any special communal electorate, and in this we include reserved seats, is quite impracticable at the present time." Various disadvantages have been pointed out of communal representation in India. It is said that communal representation has intensified communal cleavage and dragged religion into politics and that it perpetuates class division, retards national progress and the way to a united regenerate India. Moreover the concession is contagious. India is a country full of numerous castes and creeds, and gradually each community may ask for this concession.

4. Distribution of Legislative Power.

There will be a statutory demarcation between the powers of the federal and provincial governments. These are detailed in 7th Schedule to Government of India Act, 1935 reproduced as appendix III. Its first list gives the federal subjects and the second list gives the provincial subjects;

while in a third list are given a number of subjects with respect to which it is proposed that the Federal Legislature shall have the power of legislating concurrently with the provincial legislatures, with appropriate provision for resolving possible conflict of law. The Federal Court is to decide whether or not the enactment has been within the competence of the legislature passing it.

In case of grave emergency, whether by war or internal disturbances, if so declared by the Governor-General, the Federal Legislature is empowered to legislate in respect of the provincial list also. But in that case a proclamation must be laid before Parliament and it falls unless it is confirmed within six months by a resolution of both the Houses. Such an act expires six months after the expiration of the proclamation. The Federation may also legislate by consent for two or more provinces but any province may repeal or amend such legislation.

The Governor-General, in his discretion, may also assign to the centre or to the provinces power to make a law or impose a tax on any subject not included in any of these three lists. Before making such an assignment, the Governor-General necessarily must satisfy himself that there is no provision assigning such a subject to one side or the other. The Governor-General may also seek the advice of the Federal Court in such matters.

As regards the states, the Federation may legislate only in respect of matters accepted by the Instrument of Accession of the state concerned. The state may legislate but its legislation is void in so far as it conflicts with a valid federal law.

5. Restriction on Legislative Power.

It is provided that unless the Governor-General in his discretion thinks fit to give his previous sanction there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any bill or amendment which

(a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India; or

(b) repeals, amends or is repugnant to any Governor-General's or Governor's Act or any ordinance promulgated in his discretion by the Governor-General or a Governor; or

(c) affects matters in respects to which the Governor-General is, by or under the Act, required to act in his discretion or

(d) repeals, amends or affects any Act relating to any police force; or

(e) affects the procedure for criminal proceedings in which European British subjects are concerned; or

(f) subjects persons not residing on British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein; or

(g) affects the grant of relief from any federal tax on income in respect of income taxed or taxable in the United Kingdom.

Prior sanction of the Governor-General is also required to bills affecting taxation in which provinces are intersted. Similarly legislation in respect of

Reserve Bank, currency and coinage requires previous sanction.

It may, however, be noted that the grant of such prior sanction to introduce a bill does not in any way fetter the freedom of the Governor-General to refuse assent or reserve any Bill, and on the other hand the omission of such sanction does not invalidate the act in case it has duly received the assent of the Governor-General later.

No legislature in India can make a law affecting the sovereign or the succession or the sovereignty or suzerainty of the Crown in any part of India nor can it amend the Government of India Act, or rules and orders made thereunder save when it is expressly provided in the Act. Statutory restrictions are imposed to prevent the passing of legislation which is intended to or would discriminate against British commercial interests in India. The British subjects domiciled in the United kingdom are thus exempt from any federal or provincial act which restricts entry into India, or imposes, by reference to place of birth, race, descent, language, religion, domicile, residence, any disability or restriction, the holding of property or public office or the carrying on of any occupation, trade, business or profession. But this exemption does not apply in so far as Indian subjects are subject to restriction in the United Kingdom, nor is it illegal to apply quarantine regulations or to exclude or deport undesirables. Taxation also may not differentiate against British subjects domiciled in the United Kingdom or Burma, or companies incorporated in the United Kingdom or Burma. The right of a medical practitioner in British India and in the

United Kingdom to practise in either country is recognised.

6. LEGISLATIVE POWER OF THE GOVERNOR-GENERAL.

Special legislative powers are given to the Governor-General. In case of emergency, when the legislature is not sitting, he may, at his discretion, issue ordinances, which must be presented to the legislature when it reassembles, and which will automatically expire unless confirmed within 6 weeks after the re-assembly of the legislature. He may also, where matters within his personal discretion or individual judgment are concerned, promulgate ordinances which have effect for six months, but in that case they must be laid before Parliament.

Further, if at any time it appears to the Governor-General that, for the purpose of enabling him satisfactorily to discharge his functions, in so far as he is by or under the Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to both Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either[1] :

(a) enact forthwith, as a Governor-Generla's Act, a Bill containing such provisions as he considers necessary ; or

(b) attach to his message a draft of the Bill which he considers necessary.

Where the Governor-General takes such action as is mentioned in (b) above he may at any time

1. Section 44 of the Government of India Act, 1935.

after the expiration of one month enact, as a Governor-General's Act, the Bill proposed by him to the Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to the amendments suggested to be made therein.

CHAPTER VI.

THE PROVINCIAL LEGISLATURES.

"What then is expected from a well constituted second chamber is not a rival infallibility, but an additional security."—Sir Henry Maine.

1. THE PROVINCES OF INDIA.

Besides the three residencies of Madras, Bombay and Bengal, the Act provides that there will be 8 Governor's provinces. The United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-west Frontier Province, Orissa, and Sind. In addition to these there shall be the following Chief Commissioner's provinces.

1. British Baluchistan.
2. Delhi.
3. Ajmer-Merwara.
4. Coorg.
5. The Andaman-Nicobar Islands.
6. The area known as Panth Piploda.
7. Such other Chief Commissioner's Provinces as may be created under the Act.

The Crown has the power to create new provinces or to increase or diminish the areas of any province or alter their boundaries by order in

Council. Madras, Bombay and Bengal are the oldest provinces. The population of Madras under the new arrangement is about 44 millions, 88% Hindus, 7% Muhammadans, 3% Christians and the rest others; that of Bombay 18 millions, 88% Hindus, 10% Muhammadans and the rest others; and that of Bengal 50 millions, 43% Hindus and 55% Muhammadans and the rest others. Till 1874 Bengal, Bihar, Orissa and Assam were under a Lieutenant-Governor but in that year Assam was made a separate province under a Chief Commissioner. In 1905, however, the territories were rearranged as Western Bengal including Bihar and Orissa, and Eastern Bengal and Assam each under a Lieutenant-Governor. Public opinion was much against this partition; hence the arrangements were changed in King's Proclamation in 1911. Bengal proper was made a Governor's province. Bihar and Orissa and Chota Nagpur were to be placed under a Lieutenant-Governor and Assam was placed under a Chief Commissioner and was later created a Governor's Province. By the Government of India (Constitution of Orissa) Order of 1936, Orissa has been separated from Bihar. The population of Assam is 8.6 millions 58% Hindus, 31% Muhammadans and 8% tribal religions and the rest others. The population of the newly created province of Orissa is 8.3 millions out of which about 4% are Muhammadans, 3% Christians and the rest are Hindus or profess tribal religions. The province of Bihar has a population of 32.6 millions out of which 12% are Muhammadans and the rest belong to Hinduism and tribal religions[1]. The United

1. The figures of Bihar and Orissa are rough estimates.

Provinces consist of the old North-Western Province which was under a Lieutenant-Governor and Oudh which was under a Chief Commissioner. In 1877 one officer was appointed to both these posts. In 1901 the two territories were styled as the United Provinces of Agra and Oudh. These provinces have a population of 48·2 millions, 85% Hindus, 14% Muhammadans and the rest others. Till 1901 the existing provinces of the Punjab and the North-West Frontier Province were united together under a Lieutenant-Governor; but in that year the latter was separated and placed under a Chief Commissioner. In 1932 it was given the status of a Governor's province with a Legislative Council. The Punjab has a population of 23·6 millions, 27% Hindus, 57% Muhammadans, 13% Sikhs and the rest others; the North-West Frontier Province has a population of 2·4 millions, 91% Muhammadans, 6% Hindus and the rest others. The Central Provinces were created in 1861 under a Chief Commissioner and Berar was placed under the same control when it was leased perpetually in 1902 by His Exalted Highness the Nizam of Hyderabad. Their population jointly is 15·4 millions; about 88% Hindus and 5% Muhammadans and the rest consists of tribal religions. Sind, of course, is the creation of the Government of India (Constitution of Sind) Order of 1936. Its population is 3·9 millions, 27% Hindus and rest belong to Islam and minor religions.

As for the Chief Commissioners Provinces, British Baluchistan consists of 4,60,000 persons, 9 per cent. Hindus, 87 per cent. Muhammadans, 1 per cent. Sikhs, and rest others. Delhi consists of

6,36,000 persons, 63 per cent. Hindus, 32 per cent. Muhammadans 3 per cent. Chirstians and the rest others; Ajmere-Merwara consists of 5,60,000 persons, 78 per cent. Hindus, 17 per cent. Muhammadans and 3 per cent. Jains and the rest others. Coorg consists of 1,63,000 persons, 89 per cent. Hindus, 8 per cent. Muhammadans, 2 per cent. Christians; Andaman and Nicobar consist of 29,000 persons, 26 per cent. Hindus, 22 per cent. Muhammadans, 4 per cent. Christians, 33 per cent. of tribal religions, Buddhists and others.

The total population of India as a whole including Burma is 353 millions of which 77 per cent. live in British Territory; 68 per cent. of the total population are Hindus, 22 per cent. Muhammadans, 3½ per cent. Buddhists, 1·2 per cent Sikhs and 2 per cent. Christians.

A Chief Commissioner's Province is administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion. The chief difference between a presidency and an ordinary governor's province is that while in the former the Governors are appointed by the Crown usually from men of high rank and administrative experience in Great Britain, in the latter they are appointed by the Crown in consultation with the Governor-General usually from distinguished members of the Indian Civil Service. The salary of Presidency Governors and that of the Governor of the United Provinces is higher than that of those of the other provinces and they have also more personal staff at their disposal.

In addition to this, the presidency Governments

enjoy the privilege of direct correspondence with the Secretary of State on certain matters and can appeal to him against the orders of the Government of India; and in case of short vacancies in the office of the Governor-General the Governor of a presidency acts as such during the Governor-General's absence.

2. Bicameral Legislature.

The Act provides that in every Governor's Province there is to be a provincial legislature which is to consist of His Majesty, represented by the Governor and

(a) in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, two chambers.

(b) in other provinces, one chamber.

Thus in 6 out of the 11 Governor's provinces there will be a second chamber, to be known as the Legislative Council, while the lower chamber will be designated the Legislative Assembly. Where there is only one chamber it is to be known as the Legislative Assembly.

The Act, however, provides that the second chambers may be abolished after 10 years. A second chamber is intended to check the hasty, rash and ill-considered legislation which may be passed in strong passion and excitement in the lower house. It is meant to restrain such tendencies and to compel a careful consideration of legislative projects. Secondly it interposes delay between the introduction and final adoption of a measure. A third advantage of the bicameral system is that

it affords a convenient means of giving representation to special interests or classes in the state particularly to the aristocratic portion of the society. In India, however, bicameral legislature in the provinces was considered un-necessary by the Montague-Chelmsford Report and public opinion too is to some extent opposed to the introduction of bicameral system in the provinces as it often causes delay in legislation, proves over-conservative in its tendencies and may obstruct any legislation threatening the interests which might be represented in the upper house.

3 Legislative Councils.

Legislative councils are to be permanent bodies not subject to dissolution, but, as near as may be, one-third of their members are to retire every third year. The normal period of membership therefore is nine years. A table of distribution of seats to various provinces and communities in the Legislative Councils is set out in appendix IV. Legislative Councils are almost elected but as they are smaller bodies it has been found impossible to provide in them for the exact equivalent of all the interests in the Provinces. The Act, therefore, makes provision for the inclusion of a few seats to be filled in by nomination by the Governor at his discretion. This is accordingly meant for the purpose of redressing any possible ineqality or to secure some representation to women. The representation by the method of communal electorate is adopted. Franchise qualification is rather high and the electorate is small.

4. Legislative Assemblies.

The Legislative Assemblies are purely elected bodies. A table of the distribution of seats for the various communities and provinces is set out in Appendix V. Representation in the Legislative Assemblies is based mainly on the allocation of seats to various communities and special interests. Thus as in the case of the Federal Legislature, there will be separate electorate for the Muhammadan, Sikh, Indian Christian, Anglo-Indian and European and Women communities, besides the seats reserved for commerce, land-holders, labour and universities.

Every Legislative Assembly unless sooner dissolved shall continue for 5 years from the date of its first sitting. The Governor may summon, prorogue or dissolve the Legislative Assembly.

The franchise is calculated to extend very widely as compared with the number of voters under the Montague-Chelmsford Reforms. Under the new Act a male electorate of about 2,80,00,000 and a female electorate of 60,00,000 is anticipated. This comes to about 14% of the total population of British India as against 3% under the Montague-Chelmsford Reforms. The franchise thus is estimated to be 27% of the adult population and 43% of the adult male population.

Section 70 of the Government of India Act, 1935 provides that if a person sits or votes as a member of a Legislative Assembly or a Legislative Council when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of sub-section (3) of Section 69 of the Act, he shall be liable in respect

of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the province.

If a member is absent from the meeting of the chamber for 60 days without the permission of the Chamber, the Chamber may declare his seat to be vacant. A member may resign his seat to the Governor.

The Governor is not a member of any of the houses of the provincial legislature but he has a right to address or send a message to either chamber of the Provincial legislature or a Joint sitting thereof, and for that purpose may require the attendance of the members.

Every minister or Advocate-General has a right to speak in any chamber but he cannot vote unless he is a member of any of the houses.

The Legislative Council and the Legislative Assembly are to choose from amongst their members respectively a President and a Speaker to preside over these chambers. A member holding the office of a president or that of a Speaker is to vacate his office if he ceases to be a member of the chamber over which he presides. He may resign his office to the Governor or may be removed on a vote of no confidence from the House, for which 14 days' notice is required. Their salaries are fixed by provincial acts.

The quorum of each house is one-sixth of the total strength of the house, and all questions are to be decided by a majority of votes of the members present and voting in the house. The Speaker or the President has a right to vote only in case of equality of votes.

A chamber of a provincial legislature has power to act notwithstanding any vacancy in the membership thereof, and any proceeding in a provincial legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled to sit or vote has so participated in the proceedings of the House.

5. Restriction on Legislative Power

Unless the Governor-General in his discretion thinks fit to give his previous sanction there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any Bill or amendment which

(a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India; or

(b) repeals, amends, or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General; or

(c) affects matters in respect of which the Governor-General is by or under the Act, required to act in his discretion ; or

(d) affects the procedure for criminal proceedings to which European British subjects are concerned.

Similarly unless the Governor of a province gives his previous sanction, no bill or amendment may be introduced or moved by any house of a provincial legislature which (1) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor; or (2) repeals, amends or affects any act relating to any police force.

It may, however, be noted that the grant of such prior sanction to introduce a bill does not in any way fetter the power of the Governor to refuse assent or reserve any bill, and on the other hand the omission of such sanction does not invalidate the act in case it has duly received the assent of the Governor.

No provincial legislature can make a law affecting the sovereignty of Parliament or the suzerainty of the Crown. Nor can they amend the Government of India Act or rules made thereunder, unless it is expressly provided. Provisions with regard to discrimination against British subjects or British commercial interests are the same as in the case of the Federal Legislature.

6. Legislative Powers of the Governor

The Governor has got the special powers to promulgate ordinances where any such necessity arises. There will be 2 kinds of ordinances—one made on the Governor's own responsibility and the other on the advice of the ministers. The Governor can also enact laws subject to certain conditions. Section 90 of the Government of India Act, 1935 provides that if at any time it appears to the Governor that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to the Chamber or Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either—

(a) enact forthwith as a Governor's Act a Bill containing such provision as he considers necessary ; or

(b) attach to his message a draft of the Bill which he considers necessary.

Where the Governor takes such action as is mentioned in (b) above he may, at any time after the expiration of one month, enact as a Governor's Act the Bill proposed by him to the Chamber or Chambers either in the form of the draft communicated to them, or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by the Chamber or either of the Chambers with reference to the Bill or to amendments suggested to be made therein.

7. Chief Commissioner's Provinces.

The Chief Commissioner's provinces are directly under the administration of the Governor-General acting through a Chief Commissioner appointed in his discretion. The Federal Legislature has full authority over them except for British Baluchistan where the Governor-General shall act at his discretion, and may make regulations, if necessary. Until other provision is made by His Majesty in Council, the constitution, powers and functions of the Coorg Legislative Council, and the arrangements with respect of revenues collected in Coorg and expenses in respect of Coorg, shall remain unchanged.

CHAPTER VII.

ELECTION TO THE LEGISLATURES.

"But, perhaps above all, it (Parliamentary Democracy) implies a body of electors, individually alert, intelligent and informed and so organised as faithfully to reflect the will of the whole community."

—*Marriott.*

1. THE VOTER AND THE CANDIDATE.

With the wide extension of franchise and almost wholly elected legislatures under the new constitution, the law and procedure of elections are bound to arouse great interest amongst the voters as well as amongst the candidates. The word 'election' is derived from a Latin word *Electio* meaning the act of selecting one or more from others. In common use generally election means choosing one or more in a prescribed manner out of many by a distinctly defined body as their representative in a body politic. Elections are, therefore, a distinct recognition of the democratic principle and choosing one to represent many is only a simple device to save time, worry, and expense which are bound to arise if all the members of the body politic form a deliberative assembly.

For the sake of convenience each province is divided into constituencies, and each constituency, generally speaking, chooses one member. In the case of the provincial elections under the new constitution these constituencies have been detailed in the Government of India (Provincial Legislative Assemblies and Provincial Legislative Councils) order 1936, published in the Gazette of India of the 6th June, 1936.[1] These include territorial as also non-territorial constituencies, such as Commerce, Industry, Land-holders, Labour and University constituencies.

Much earlier to the election, a provisional electoral roll i. e. a register of persons eligible to vote is prepared for each constituency. The qualifications for these voters differ from province to province and are detailed in the 6th Schedule to the Government of India Act, 1935. But generally the franchise qualification is based on property which may be gauged by land revenue by various conditions of agricultural tenancy, by assessment of income tax and in the case of towns by the amount of rent paid. A voter must belong to the community for which the electoral roll is prepared, i. e. general, Muslims, Christians, Europeans, Anglo Indians, Sikhs etc. Besides every voter must be 21 years of age, of sound mind and a British subject, not guilty of election offences, or undergoing transportation, penal servitude or imprisonment. A ruler or the subject of an Indian state may also vote under certain conditions laid down in the Act. No person may vote at a general election in more

1. The order relating to elections to the Federal legislature has not been published.

than one territorial constituency, but an exception is made in the case of women where special territorial constituencies exist for them and they may vote therein and in one another constituency. Women are enfranchised if they have property qualifications in their own right, or if they are wives or widows of men so qualified or are wives of men with a service qualification or are pensioned widows or are mothers of military or police force or who possess a literary qualification.

After the preparation and publication of these provisional electoral rolls, a person who claims to be entitled to be registered and who is either not registered or is incorrectly registered may claim to be registered or to be registered correctly by sending to the Returning Officer a claim to that effect within the prescribed date. Similarly, notices of objections to the registration of any person whose name appears in the electoral list must be sent to the Returning Officer within the prescribed time. The claims and objections are then considered and claimants and objectors are given an opportunity of making good their cause. After the decision of the Officer necessary corrections are made in those rolls and they are then published finally. This is the final list of the voters in a constituency.

The Governor or Governor-General, as the case may be, then by notification fixes the various dates in connection with election. Nominations are called for and scrutinised on a date so fixed. The requisite qualifications for nomination to the federal legislature are that the candidate proposed must be 30 years for the upper house and 25 for the lower

house, a British subject, or the ruler or a subject of an Indian State, and of sound mind. He should not be disqualified on account of election offences or by reason of imprisonment or transportation for criminal offences. Persons holding office of profit under the Crown are also disqualified but permanent servants employed in Indian States are not so disqualified. Similar provisions have been made for the provincial legislature in Section 69 of the Act. Ministers, Presidents, part-time officers, such as, Deputy President, Government Pleader, Assistant Government Pleader, Government Treasurer and Assistant Government Treasurer are not considered as holding office of profit under the Crown for the purpose of election.[1] The nomination is made in writing and the candidate is proposed and seconded by a registered elector of the constituency.

2. THE PROCEDURE AT ELECTIONS.

On or before the date appointed for the nomination each candidate must deposit or cause to be deposited with the Returning Officer a fixed sum, varying in the case of various elections, without which no nomination is considered valid.

This deposit in the case of the United Provinces is Rs. 500 for the Legislative Council and Rs. 250 for the Legislative Assembly.[2] In the case of candidates of depressed classes and labour, however, it is only Rs. 50. The deposit may be returned if a candidate withdraws his candidature within the prescribed time or if his nomination is refused

1. U. P. Government notification no. 2485-R dated 27-7-36.
2. U. P. Legislative Assembly and Legislative Council (conduct of Election and Election petition) Rules 1936 published in the U. P. Gazette of 24-9-36.

or if he dies before the commencement of the poll. But if a candidate is not elected and if the number of votes polled by him does not exceed a certain prescribed number, usually one-eighth of the total votes polled, the deposit is forfeited to the Government. The object of this is to discourage frivolous candidates.

Detailed procedure is given in the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) order[1] 1936 published in the Gazette of India of the 25th July, 1936 and the rules made by the Provincial Governments under the Act for the conduct of elections. On nomination a candidate is accordingly required within the prescribed period and in the prescribed manner to appoint either himself or some other person to be his election agent. No person can be so appointed who for the time being is disqualified to vote or stand as a candidate for election. Any revocation of the appointment of an election agent is to be signed by the candidate and similarly the candidate is required to give notice to the Returning Officer of the new election agent. The election agent is required to keep separate and regular books of account, and also to enter therein such particulars of expenditure in connection with the election as may be prescribed.

A date is then fixed for polls and officers to preside at polling stations are appointed. In case the number of candidates and the number of vacancies is the same, no recording of votes is necessary and the candidate or candidates are declared elected. But where there are more candidates than

1. Similar order, for the elections to the Federal legislature has not yet been issued.

the number of vacancies, a poll takes place on the fixed date and votes are recorded. The presiding officer maintains order at the polling station and sees that the election is fairly conducted. He regulates the number of voters to be admitted. After the polls, the presiding officer seals with his own seal and the seal of such candidates or agents as may desire to affix their seal, each ballot box used in the station. On a later date fixed for the purpose, count takes place when 'spoilt' ballot papers are eliminated and only the valid ones are taken into account. Votes are counted by, or under the supervision of the Returning Officer and each candidate and either his election agent or one representative of each candidate authorised in writing by the candidate shall have a right to be present at the time of counting. The candidates or candidate getting the highest number of votes are or is declared elected. If a candidate is elected to two houses, he should declare in which house he would like to remain.

After the election a return of the election expenses is to be signed both by the election agent and the candidate and is to be submitted to the officer accompanied by a declaration in the prescribed form on oath before a magistrate. But where a candidate is, owing to absence from India, unable to sign the return of election expenses and to make the required declaration, the return may be signed and lodged by the election agent and may be accompanied by a declaration of the election agent only but the candidate must within fourteen days after his return to India cause to be lodged with the Returning Officer a declaration

made on oath before a Magistrate in such form as may be prescribed. Non-submission of election expenses within the prescribed period disqualifies a member to sit in the house.

In each province provision may be made, by an act of the provincial legislature or by rules, fixing the maximum scales of election expenses at election and the number and description of persons who may be employed for payment in connection with elections. For the United Provinces these rules, have been published in the United Provinces Gazette (Extraordinary) of the 24th September, 1936. According to them the maximum scale of expenses which shall apply to elections of any candidates to the United Provinces Legislative Assembly is Rs. 20,000 for rural constituencies, Rs. 15,000 for the urban, European, Anglo-Indian and Indian Christians constituencies and sums varying from 1,000 to 10,000 for other constituencies. For the United Provinces Legislative Council the amount so fixed is 10,000 for rural and Rs. 8,000 for urban constituencies.

3. Election of 'Depressed' Classes.

In the case of the Depressed Classes which are enumerated in the Government of India (Scheduled castes) order 1936 published in the Gazette of India of the 6th June, 1936, the system of election would, however, be slightly different. All the members of the Depressed Classes registered in the general electoral roll in a constituency will form an electoral college, which will elect a panel of four candidates belonging to the Depressed Classes for each

of such reserved seats, by the method of single transferable vote ; the four persons getting the highest number of votes in such primary election, shall be candidates for election in the general electorate and out of these four, the one securing the highest number of votes would be declared elected. The seats reserved for the Depressed Classes are given in appendices I, II, IV and V.

4. Election Petitions.

No elections can be called in question except by an election petition presented to the Governor in accordance with the prescribed rules. These rules may be determined by acts of provincial legislatures or rules made by the Governor in this behalf. A petition must be presented by the candidate or by the elector or by an officer empowered in that behalf by the Governor under certain conditions. The petitioner deposits a certain prescribed amount as security for the cost of petition. In t e United Provinces this amount is fixed for the Legislative Council election petitions at Rs. 1000 and for the Legislative Assembly election petition at Rs. 250

A petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself has been duly elected, but such a declaration can only be claimed on one or other of the following grounds—

(a) that in fact the petitioner received a majority of the valid votes; or

(b) that but for votes obtained for the returned candidate by corrupt practices, the petitioner

would have obtained amajority of the valid votes.

The Governor may exercising his individual judgment, dismiss a petition for non-compliance with the prescribed rules. But if the petition is in order he shall appoint as commissioners for the trial of the petition three persons who are or have been or are eligible to be appointed, judges of a High Court, and shall appoint one of them to be its President. Where in respect of an election in a constituency more petitions than one are presented the Governor refers all those petitions to the same Commissioners, who may at their discretion inquire into the petitions either separately or in one or more groups, as they think fit.

The Advocate-General of the province or some person acting under his instruction, may attend and may take such part therein as the Commissioners may direct.

If in the opinion of the Commissioners[1]—

(a) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt practice[2]; or

(b) any corrupt practice has been committed in the interests of a returned candidate; or

(c) the result of the election has been materially affected by the improper acceptance or rejection of any nomination, or by reason of the fact that any person nominated was not qualified for election, or by the improper reception or refusal of a vote, or by the reception of any vote which is void, or by

1. Sec. 7 of part 3 of the Government of India (Provincial Elections) (Corrput Practices and Election Petitions) order 1936.

2. These are detailed in appendix 6.

any non-compliance with the provisions of the Act or, of any Act of the Provincial Legislature or Rules relating to the election, or by any mistake in the use of any prescribed form ; or

(d) the election has not been a free election by reason of the large number of cases in which bribery or undue influence has been exercised or committed ;

the election of the returned candidate is to be declared void.

If the Commissioners report that a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but further report that the candidate has satisfied them that:—

(a) No corrupt practice was committed at the election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders, and without the sanction or connivance, of the candidate or his election agent ;

(b) the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election ;

(c) the corrupt practices mentioned in the report were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election; and

(d) in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the Commissioner may find that the election of the candidate is not void.

If a person (not being entitled to do so) votes

more than once at the same election, all his votes will be deemed to be void.

At the conclusion of the inquiry the Commissioners will report whether the returned candidate, or any person who has lodged a petition and claimed a seat, has been duly elected and will further recommend as to the total amount of costs which are payable and the persons by and to whom the cost should be paid, and any such recommendation may include a recommendation for the payment of costs to the Advocate-General of the Province or a person acting under his instructions attending the trial in pursuance of an order of the Commissioners. The report must be signed by all the Commissioners and the Commissioners must forthwith forward their report to the Governor, who on receipt thereof will issue orders in accordance with the report and publish the report in the Government Gazette of the Province, and the orders of the Governor shall be final. If either in their report or upon any other matter there is a difference of opinion among the Commissioners, the opinion of the majority shall prevail and their report shall be expressed in terms of the views of the majority.

Where any charge is made in an election petition of any corrupt practice, the Commissioners will record in their report[1]:—

(a) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent, or with the connivance

1. Sec. 10 of the Government of India (Provincial elections) (corrupt practices and Election petitions) order 1936.

of any candidate or his agent, and the nature of that corrupt practice; and

(b) the names of all persons, if any, who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of that practice with any such recommendations as the Commissioners may think proper to make for the exemption of any persons from any disqualifications which they may have incurred in this connection under paragraph 2 to 5 of the disqualifications enumerated in Part IV[1] of this order.

Provided that no person will be so named in the report unless he has been given a reasonable opportunity of showing cause why his name should not be so recorded.

5. System of Single Transferable Vote.

It is argued that the existing method of election in India, which is the same as in Great Britain does not give true representation to popular opinion. Supposing four candidates contest a seat, A getting 15000 votes, B getting 14999, C 14500 and D 5501, A would be declared elected by a majority of 1 and would represent the opinion of all the voters including the 35000 who voted against him. Thus under this system of election, the results of the general elections are amazing distortions of the popular will. Taking for example the election in England in 1918, the coalition Government won 472 seats in the House of Commons against 130 won by the anti-coalition party—a majority of nearly 4 to 1. But the coalition party

1. Reproduced as appendix 7 of this book.

had obtained only 52 per cent. of the votes cast, against 48 per cent. given to their opponents. Similarly in the election of 1922, the Conservatives obtained 347 seats in Parliament and a clear majority of 79 over others yet they polled only 38% the votes cast. In the election of 1923, the Conservatives obtained almost the same percentage viz. 38 per cent. but they lost 90 seats and were placed in a minority of about 100. In 1924 the Conservatives got 415 seats with only 47% voting on their side. Similarly the subsequent elections proved that the proportion of votes cast and candidates returned to various parties widely differed.

The system of single transferable vote is often advocated to overcome this defect in the machinery of election. Under this system the existing single member constituencies will be grouped together into larger constituencies with 4 or 5 seats. Whatever the number of seats may be, each elector will have one vote only ; but he would be entitled to indicate on the ballot paper the order of his preference amongst the candidates by numbering them 1, 2, 3, 4, 5 etc. If the candidate of his first preference did not require his vote, or is hopelessly out of the running, the vote would be transferred to his second preference, and it need be to his 3rd and so on. Thus in no case would his vote be wasted. It would always help to return somebody. This system is used in India in the election to various committees of the legislatures and although it is a little complicated it has produced good result and has made representation more real.

CHAPTER VIII.

PRIVILEGES OF THE INDIAN LEGISLATURES.

"*What is said and done within the walls of Parliament could not be inquired into a court of law;*"

—*Coleridge*

1. INTERFERENCE OF LAW COURTS.

The story of a successful assertion of their privileges by the House of Commons forms one of the most absorbing chapter in the history of England's fight for freedom and India has no parallel to it. One of such privileges is the exclusive right of the House of Commons to regulate its own proceedings within its own walls without interference by any external agency e. g. the courts of law (Bradlaugh W. Hasset, 12 Q. B. D. 281). In India the position is not so well defined.

In 1924, in Calcutta, when the Legislative Council had thrown out the demand for the salaries of ministers during the detailed discussion of the grants and the Government later brought forward a supplementary demand for the same purpose, the opponents of the demand sought, by means of an application for a *Writ of mandamus* in the Calcutta

High Court, to compel the President of the Bengal Legislative Council to disallow the motion on the ground that it was inadmissable under the Legislative Council rules as they then stood. Though the application for *mandamus* was rejected by the High Court, such rejection was not on the ground that the court had no power to interfere with the rules and regulations made for the internal working of the Legislative Council or that the President's interpretation of the rules was beyond question in court of law. (J. M. Sen Gupta Vrs. E. A. H. Cotton, I. L. R. 51, Calcutta, 874). Similarly on the 3rd September 1928, at the time of the motion in the Madras Legislative Council for the election of the 7 representatives to confer with the Indian Statutory Commission, an application was made in the Madras High Court for a *Writ of Certiorari* preventing the President of the Legislative Council from admitting the motion or putting it to vote of the House. The pendency of the proceedings in the High Court was brought to the notice of the President, but the President pointed out that an application in the High Court need not interfere with the course of business in the Legislative Council and that the Council had a right to regulate its own proceedings.

The committee appointed by the Government of India on Constitutional Reforms presided over by the late Sir Alexander Muddiman recommended in paragraph 91 of their report that the matter should be placed beyond doubt and that legislation should be undertaken either in England or in India barring the courts from premature interference with the internal forms of the legislatures. The

Government of India Act, 1935 in Section 41 therefore provides:—

1. The validity of any proceedings in the Federal Legislature shall not be called in question on the ground of, any alleged irregularity of procedure.

2. No officer or other member of the Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

The same provisions have been made for the provincial legislatures in section 87 of the Act.

2. Freedom of Speech.

Freedom of speech is another privilege indispensable for every law-making body. "The fullest and most complete ventilation of every plan, object and purpose is," says Burquess, "necessary to wise and beneficial legislation. This could never be secured if the members should be under the restraints imposed by the law of slander and libel upon private character." There are three obvious reasons for freedom of speech in any legislature. Firstly without the right of persuasion, a minority cannot be satisfied with the decisions, of the legislature or acquiesce in them as embodying the deliberate and considered opinion of the majority ; the right of persuasion implies freedom of speech. Secondly, free debate is an indispensable preliminary to a wise decision. Thirdly, if the legislature is to ventilate the grievances of the electorate, there should be complete freedom of speech, as no

one would venture to complain of grievances unless there was perfect immunity in the presentation of those grievances.

The new Act provides that there shall be freedom of speech in the legislatures and no member shall be liable to any proceeding in any court in respect of any speech or vote given by him in the legislature or a committee thereof, and no person shall be liable in respect of the publication by or under the authority of a chamber of such legislature of any report, paper, votes or proceedings.

Lately a very interesting point arose in the Burma Legislative Council whether interpellations like speech and vote, were equally exempt from legal proceedings. The facts of the case were that Mr. U. Khin Maung, a member of the Burma Legislative Council asked a question, "Is the Government aware cf gambling dens under the name of Chinese clubs and that opium and cocaine smuggling on a large scale is done by Mr. Aw Eu Wah of 59, 18th street"? Mr. Aw Eu Wah thereupon brought a suit against Mr. Maung in the court of western sub-divisional magistrate Rangoon for defamation. The magistrate issued defamatory processes and the matter was finally referred to Mr. Justice Dunkley of the Rangoon High Court for revision. The real issue before the court was "when a member of the Burma Legislative Council asks question under rule 8 of the Legislative Council Rules and Section 4 of the Council Standing Orders, is he entitled to absolute privilege in the same sense that no proceeding can be taken against him in court in respect of any statement made in the question." Standing order No. 28 (3) of the Burma

Legislative Council provided that a question shall *not be asked if it contained a statement by a* member, unless he had made himself responsible for the accuracy, of the statement. On the other hand under Sub-section 7 of Section 72 (d) of the Government of India Act, 1919 there were certain immunitities for the members of the Council in respect of speech and vote in the house. His Lordship argued that freedom of speech to members was subject to Rules and Standing Orders, and secondly that immunity from legal proceeding was confined to "speech and vote" only and therefore the privilege did not extend to interpellations. But his Lordship realising the public importance of the question raised decided to refer the matter to the full bench who held the contrary view. Referring to the Standing Orders and rules quoted above, the Chief Justice Sir Godman Roberts observed that the member is "responsible for the accuracy of the statement" only to the President. That enjoined upon a member of a course of conduct, and in the opinion of the Chief Justice it meant only this that he should give his assurance to the President, if need be, that he has checked the sources of his information. The case was therefore finally decided on 20th July, 1936 in favour of Mr. Maung and a definite ruling was given that the members of the Council enjoyed absolute privilege in respect of questions also, as in the case of speech and vote, and that no proceedings can be taken against them in a law court in this behalf.

Another important point was recently raised whether the publication of the speeches in the legislature or extracts therefrom by non-official agencies

possesses exemption from legal proceedings. A Hindi newspaper of Allahabad was asked to deposit security by the United Provinces Government under Sub-section 3 of Section 7 of Act 23 of 1931, for printing a Hindi translation of the full text of the speech of Pandit Krishna Kant Malaviya made in the Assembly on the criminal law (Amendment) Bill. The question was raised in the Assembly and it was ruled by the President that such publication by newspapers did not enjoy immunity from legal proceedings. The position was reiterated by Sir Henry Craik in the Legislative Assembly on 12th October, 1936 that "outside the House the speeches of members are not privileged."

3. FREEDOM FROM ARREST.

As for freedom from arrest Act 23 of 1925 provides:—

1. No person shall be liable to arrest or detention in Prison under a civil process

(a) if he is a member of either chamber of the Indian Legislature or of a Legislative Council constituted under the Government of India Act, during the continuance of any meeting of such chamber or council ;

(b) if he is a member of any committee of such Chamber or Council, during the continuance of any meeting of such committee ;

(c) if he is a member of either chamber of the Indian legislature, during the continuance of a joint sitting of the Chambers, or of a meeting of a conference or joint committee of the Chambers of which he is a member ;

and during the fourteen days before and after suchmeeting or sitting.

2. A person released from detention under sub-section (1) shall, subject to the provisions of the said sub-section, be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub-section (1).

4. Disciplinary Powers.

The legislatures in India have power to remove or exclude persons infringing the rules or standing orders or otherwise behaving in a disorderly manner. A member may be promptly called to order for using unparliamentary expressions or for uttering treasonable, seditious, or defamatory words. But Indian legislatures have no power to imprison for contempt against its authority as the Speaker of the House of Commons possesses nor has it any judicial powers. In India the Chair can ask the offender against his authority to apologise if he is a member. If he is a stranger, he may do nothing beyond censoring from the chair the action of the offender and refusing a ticket of admission to him to the visitors gallery if he applies for one. If the offender is connected with the press, the Chair can instruct the office not to give him any of the concessions or supply him with any information, shown or supplied to the press and he can also refuse a ticket of admission to the press gallery, if he applies for one. These powers were actually exercised only recently in the case of the Amrita Bazar Patrika. The President of the Legislative

Assembly cancelled the press gallery pass to its special representative and removed the paper from the list of approved newspapers, having taken exception to the editorial comments in the paper on the President's ruling given on 2nd September, 1936 during the debate on the adjournment motion relating to the alleged abolition of the Tariff Board and on the statement on 4th September, 1936 made in connection with the walk out of the Congress Party. The President in his letter to the Patrika held that the said comments "have exceeded the bounds of fair comments and constitute a malicious and scandalous libel reflecting on his character and contain accusations of partiality in the discharge of his duty as President."

5. SALARIES ETC.

Members of the Indian Legislatures do not get any fixed salary but they receive travelling and halting allowances for attendance at a meeting of the legislature. But the new Acts empowered the legislatures concerned to make rules regarding their salaries and allowance, if they desire any change.

CHAPTER IX

GENERAL PROCEDURE IN THE LEGISLATURE

"Parliamentary procedure is often better index of the true balance of power than the written constitution."
—*Morgan*

1. Parliamentary Procedure in India.

In the previous chapters we discussed the functions, constitution and privileges of Indian legislatures. Our next step is to consider the laws, rules and conventions, devised for their orderly and efficient working ; for without them, no representative institution can satisfactorily work. These rules for the conduct of business of a legislature are better known as Parliamentary procedure.

In India representative institutions and responsible government are of recent growth, therefore, the knowledge of parliamentary procedure is not yet sufficiently wide spread and the rules of procedure are still a mystery to most people. They have very vague notions about them and not unoften think that they consist of arbitrary provisions and meaningless and unnecessary forms placing difficulty in the way of members exercising their

rights. Although on a closer examination it will appear that the rules of procedure are far from being arbitrary or meaningless, and are mostly based on excellent reason and embody sound principles of justice, equity, fairness and good conscience.

The purpose of these rules is to establish a course of conduct by which every member of the house gets a fair chance to participate in the proceedings and, to arrange the business as to extract the maximum utility in the minimum time. Then the decision reached in the body must have been arrived after adequate debate conducted with freedom enough to permit useful contribution of ideas and opinions, and to exclude as far as practicable the untoward influence of precepetency or passion.

Last but not least, the purpose of these rules is to protect the rights of the minorities in the house. Whatever action may the house take but the minority must "have their say". The cry of Themistocles to Eurybiades was "strike, but hear me".

2. THE CHAIR.

Such are the principles on which rules of procedure are based. But the efficiency of all these depend on the good will of the members of the house and still more on the even handed treatment of the officer enforcing them—namely the President or the Speaker. The term Speaker is borrowed from the House of Commons. His position is as old as that of the House itself and his title is derived from the fact that he alone had the right to

speak for the House of Commons before the King. In those days the Speaker's chief function was to take petitions and resolutions from the House and lay them before the King. The House besought the King to make laws and the King made them if he was so inclined. The Speaker was then merely the spokesman of these numerous and sometimes unwelcome requests, hence his title.

The functions of the Speaker may be classified as twofold, (i) he is the spokesman and representative of the house and (ii) he is the chairman of the meeting of the members. The presidential functions attached to his office as chairman of the house are in India much more important than his functions as the mouthpiece of the House. Subject to the huge exception of historic and ancient privileges which the Speaker of the House of Commons inherits from the past, the President or Speaker in India has most of the rights and privileges enjoyed by the Speaker of the House of Commons. He represents the legislative body and speaks on its behalf. According to the standing orders he is the medium of communication between the House in its dealings with the Government or the outside public.

As regards the netural character of the speaker's office, the speaker ceases from the moment of his election to the chair, to be a party man. In England the Speaker's severance from party ties is indeed so complete that, after his election, the Speaker does not enter the portals of any political clubs of which he may happen to be a member. That is the high tradition of the speakership of the House of Commons. In India too the

practice is to a great extent followed and President or Speaker does not take part in any party politics after his election to the chair.

In fact the obligation of impartiality is in a sense statutorily recognised in the Government of India Act which says, "Save as provided in the last preceding section, all questions at any sitting or joint sitting of the chambers shall be determined by a majority of votes of the members present and voting, other than the president or speaker or person acting as such. The president or speaker or the person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes."[1] Even in exercising his casting vote, the speaker acts on certain well established practices and conventions.

It is thus a well established convention for the chair to maintain *status quo* in case of equality of votes. On November 2, 1922 in the U. P. Legislative Council, Babu Chhail Behari Kapur moved that the demand for Rupees 10 under the head Civil Works, a new demand be omitted. The House having equally divided on this issue, the President observed, "As it happens the result of the voting is Ayes 21, Noes 21. It lies on me consequently to give a vote one side or the other. This is entirely new item and the Council has not expressed its opinion in favour of it. Hence I vote with the Ayes." The demand was therefore refused. When a bill comes before the house as reported by the Select Committee and it fails to come to a decision by a majority as regards a particular amendment the chair votes for the *status quo* i. e. for the rete-

1. Sec. 23 (1) of the Government of India Act, 1935.

tion of the words as reported by the Select Committee.[1]

The impartiality of the Speaker in England has given rise to two important conventions, namely, that so long as the Speaker is willing and able to serve as Speaker he should be continued in office, and that at the election from his constituency, he should be allowed an easy walk over, as Speaker Gully pointed out in the historic election for Carlisle in 1895, "It is unfair to put a man disarmed in the middle of the ring and subject him to the condition of a contest. He cannot descend into the rough strife of the electoral battles and canvass for elections without impairing the independence and dignity of the Chair." But this convention has not been invariably followed even in Great Britain and there have been cases where the seat of the Speaker has been contested. In India, however, the institution of elected president has been in existence for too short a period to form any precedent on this question, but here too are instances where the president has been contested both in the constituency and in the House.

The chair is the sole and final authority of all questions arising in the house and he is only to interpret the rules and if his conduct "is to be impugned, it can only be impugned by a direct appeal to the House upon notice of motion properly given, when a straight issue would be laid before the House and an amendment be moved which shall test the judgment of the House. In no other manner and by no other authority could the ruling of the chair be subjected to any criticism or censure

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1. U. P. Legislative Council Proceedings Volume 30 page 640-643.

within the Assembly Chamber. Such indeed is the sanctity attached to the rulings of the chair by constitution and by convention."[1] Even in the house the conduct of the Chair cannot be questioned except by a substantive motion against him.[2] The newspaper comments reflecting upon the impartiality of the chair may be effectively dealt with by the chair and the House.[3] It has also been ruled in the Legislative Assembly on 23rd September, 1921, that "Chamber building could not be used for any business other than that of the House without the sanction of the President." The chair is also the supreme authority within the precincts of the House and no protective measures could be put in force within the chamber precincts without his previous approval.[4]

In the absence of the President or Speaker, the Deputy President or Deputy Speaker or Chairman occupies the chair, and he too is expected to remain neutral as long as he occupies the chair. While presiding he has similar powers and privileges as the President or Speaker and no appeal can be made from his decision to the President or Speaker [5]on the latter's resumption of the chair.

After the Reforms of 1919 there has grown up an institutionc alled Presidents' Conference. The purpose of this conference is to enable the presidents to exchange in full and free confidence their experiences and the general results for the work in their respective chairs. The first conference was held in Simla in 1921 was very

1. L.A.D. dated 2 9 1929 page 109-112.
2. L.A.D. dated 11 2 1935.
3. L.A.D. dated 15 2 26 p. 1195, dated 14-9-25. 22 to 25 September, 1928 & 23-1-29.
4. L.A.D. dated 20 1 1929.
5. L.A.D. dated 11-7-1923 p. 4533-42 and page 13 3-1924 page 1690.

successful and the conference decided to make it an annual event. But now the conference is not held annually. Its proceedings are confidential. Neither the Government of India nor the local Governments have any part in them. It is indeed a very valuable institution for the various presiding officers and it is hoped that such deliberations would be encouraged all the more under the new constitution.

The salaries of the presidents of the legislatures in India vary from province to province. Under the Reforms of 1919 the President of the Legislative Assembly was paid Rs. 4,000 a month; the presidents of the Legislative Councils of Bombay, Bengal and Punjab used to get Rs. 3,000 p. m., those of Madras, United Provinces, Bihar and Orissa and Central Provinces, Rs. 2,000; that of Assam Rs. 1,000; and that of North-West Frontier Province Rs. 833. The Deputy Presidents used to get Rs. 5,000 per annum in Madras, Bombay, Bengal and United Provinces; in Bihar and Orissa it was only Rs. 250 per month; while in Assam it was a nominal amount of Re. 1. The Speaker of the House of Commons draws a salary of £5000 p.a.

3. Rules of Procedure.

There are rules for the guidance of the presiding officers. Under the Government of India Act, 1919 the proceedings of the legislatures are regulated by the Act, rules made thereunder and the standing orders modelled on the practice prevalent in the House of Commons. Besides this there are approved usages and practices which play

an important part where the law is not clear. Section 38 of the new Act makes provision regarding the rules of procedure in the Federal Legislature.

1. Each Chamber of the Federal Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business :

Provided that as regards each Chamber the Governor-General shall in his discretion, after consultation with the President or the Speaker, as the case may be, make rules :—

(a) for regulating the procedure of, and the conduct of business in the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment ;

(b) for securing the timely completion of financial business ;

(c) for prohibiting the discussion of, or the asking of questions on any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has power to make laws for that State, unless the Governor-General in his discretion is satisfied that the matter affects Federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked ;

(d) for prohibiting, save with the consent of the Governor-General in his discretion,

(i) the discussion of, or the asking of questions on, any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or

(ii) the discussions, except in relation to estimates of expenditure of, or the asking of questions on, any matter connected with the tribal areas or the administration of any excluded area; or

(iii) the discussion of, or the asking of questions on, any action taken in his discretion by the Governor-General in relation to the affairs of a Province; or

(iv) the discussion of or the asking of questions on, the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof;

and, if and in so far as any rule so made by the Governor-General is inconsistent with any rule made by a Chamber, the rule made by the Governor General shall prevail.

2. The Governor-General, after consultation with the President of the Council of State and the Speaker of the Federal Assembly, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers.

The said rules shall make such provision for the purpose specified in the proviso to the preceding sub-section as the Governor-General in his discretion may think fit.

3. Until rules are made under this section, the rules of procedure and standing orders in force

immediately before the establishment of the Federation with respect to the Indian Legislature shall have effect in relation to the Federal Legislature subject to such modifications and adaptations as may be made therein by the Governor-General in his discretion.

4. At a joint sitting of the two Chambers the President of the Council of State, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

Almost similar provision is made by Section 84 of the Act for the Provincial Legislatures.

4. MEETING AND ADJOURNMENT.

For the purpose of constituting a new House the Governor-General or Governor, as the case may be, by notification calls upon the constituencies to elect members in accordance with the electoral rules within such time, after the date of expiration or dissolution, as may be prescribed by such notification. The House is made complete by nominations if necessary under the Act. If any person having been elected or nominated subsequently becomes subject to any of the disabilities mentioned in the electoral rules, or if he refuses to make the oath or affirmation within the prescribed period, the Governor-General or Governor, by notification in the local Gazette declares his seat to be vacant.

The Governor-General or Governor, as the case may be, then appoints the time and place for holding the session of the legislature. Usually the house meets at 11 a. m. But the Bombay and Punjab legislative councils meet at 2 p. m. and

hold sittings till late in the night, similar to the House of Commons which generally meets at 2'45 p. m. After the transaction of business the House is either dissolved, prorogued or adjourned. A dissolution brings the existence of the house to an end, a prorogation brings the session of the house to an end; and an adjournment brings about a cessation of the business for a period of hours, days or weeks.

When the house is prorogued all the pending notices are lapsed, except the notices of question to which final replies have not been given. But a bill which has been introduced shall be carried over to the list of pending business of the next session. On the dissolution of the house every business before it lapses. The adjournment of the house takes place at the pleasure[1] of the chair unaffected by the proceedings of the other house Business pending at the time of the adjournment is taken up at the point at which it is dropped when the house meets again subject, of course, to rules and usage. Prorogation takes place by the exercise of the power by the Governor-General or Governor, as the case may be, as conferred on him by or under the Act. It ends the session of both the houses. The dissolution of a house may be affected either by an exercise of the power by the Governor-General or Governor, conferred on him under the Act or by the efflux of time.

5. ARRANGEMENT OF BUSINESS.

When the house is about to sit the Governor-

1. L. A. D. 14. 3. 1922 p 3076-77 and 30. 1. 1935. p. 971.

General or Governor, as the case may be, considering the business coming before the house allots as many days as in his opinion are sufficient for the non-official business and may allot different days for the disposal of different classes of such business, and that business shall have precedence on those days. On the other days only government business shall be taken up except with the permission of the Governor-General or Governor, as the case may be, and the Secretary to the house arranges that business in such order as the Governor-General or Governor directs.

On the 9th February, 1926, a non-official day, His Excellency the Commander-in-Chief desired to make a statement. The President of the Legislative Assembly observed, "I understand that His Excellency the Commander-in-Chief desires to make some important pronouncement. Before I allow His Excellency an opportunity to make that statement, I desire to make it absolutely clear that this is one of the few days alloted by His Excellency the Viceroy for the purpose of non-official business, and if I allow this opportunity to His Excellency the Commander-in-chief to make a pronouncement, which is really a part of official business, I do so with the consent of the House, and I hope the Government will not cite that as precedent in future."

The relative precedence of notices of bills and resolutions by non-official members is determined by ballot held in accordance with the procedure laid down by the rules. This may differ from province to province. In the Legislative Assembly, the Secretary, not less than 17 days before each

day alloted for the non-official business, places in his office a numbered list. The list is kept open during the prescribed number of days during office hours when any member desiring to give notice of resolution, or bill may have his name entered. The number is fixed by rules. These papers with numbers corresponding to those against which entries have been made on the numbered list are placed in a box and a clerk at hazard takes out from the box one of the papers and the Secretary who is always present calls out from the list the corresponding name which is then entered on the priority list. This procedure is repeated till all the numbers have been drawn. Priority on the list entitles a member to have set down, in the order of his priority for the day with reference to which ballot is held, any bill or any resolution of which he has given notice required by the rules provided he specifies there and then such bills or resolutions.

6. SEATING ARRANGEMENT.

In the House, as is invariably the case everywhere, to the right of the President or Speaker sit the Government members and their supporters. On the left and centre sit the opposition and the independent groups. Leaders of parties and ex-ministers who are members of the opposition generally sit on the front benches opposite to the Government members but the first seat on the left is reserved for the Deputy Speaker or the Deputy President. Around the house on either side run the lobbies, the "Ayes" lobby to the right of the Chair and "Noes" lobby to his left, As far the inner

seating arrangement, it is vested with the Chair and it has been the practice for the Chair to allot blocs of seats with desks to the various "parties" leaving it to the party organisations to allot the individual seat within the bloc to its individual members. The party which is numerically the largest is usually given the first bloc of seats on the left, the next being given to the second largest and so on. This is the practice hitherto followed in both the houses of the Indian Legislature and the Provincial Legislatures. The chambers in India have enough room to accommodate all the members of the existing house.

It will be interesting to note that the capacity of the British House of Commons to accomodate is much less than the number of its members whose number is 615. "In a busy house some members might even have to stand. To retain a seat during a sitting, a member must obtain from the attendant in the chamber a white card, which he places on a seat, to signify his intention of being present at the prayers. After prayers he puts the card into a slot behind the seat, by which he acquires a right to it throughout the day only. Absence at prayers forfeit such rights. In neither house of Parliament desks are provided to each member as is generally the case in oversea Parliament."

In the Canadian House of Commons members are provided with a seat and a desk to which is affixed a card with the name of the occupant to whom it has been alloted. The location of seats is arranged by the whips and the leaders of various political parties. In Australian Federal Parliament,

however, seating arrangements are governed by standing orders and are similar to those of India. In the New Zealand Parliament the seating of members as a rule is arranged by the party whips. Should any difficulty arise, the standing orders provide that it shall be settled by Mr. Speaker. Almost similar practice is followed in the House of Assembly of the Union of South Africa. In Natal and South West Africa seating of the members is arranged by the Clerk in consultation with the party leaders. In Ireland the Chairman looks after these arrangements.*

7. List of Business.

At each days' meeting a printed list of the business for the day commonly known as agenda is prepared by the Secretary which is given to each and every member of the House and any other business not included in the list cannot be transacted[1] except with the permission of the presiding officer. Copies of all the notices, bills, reports of select committees and other relevant papers are made available to the members. Non-official business set down for any day and not finished on that day cannot be set down for any subsequent day unless it has gained priority at the ballot held with reference to that day.[2] Nor can an adjourned debate be resumed on a day alloted for non-official business except with the consent of those members who have obtained places in the ballot for that day.

1. L. A. D. 4. 2. 29, Page 388
2. L. A. D. 28, 1. 25 Pages 420 to 427

8. LIBRARY OF THE LEGISLATURE.

It may seem out of place to mention in this small book, what appears to be a domestic matter concerning legislatures namely the library of the House. But its importance can only be felt when one sees the day to day sittings of the House discussing complicated matters of technical nature of which the members generally do not possess enough knowledge. Besides, nature teaches us the necessity of guiding our own action in the light of the experience of others in similar circumstances. A library of the legislature serves this purpose. It provides books on most branches of learning with which the legislators are concerned—constitutional, economic, commercial, and historical. An uptodate catalogue and index guides a member to various subjects and the staff is ever ready to serve. Of course the value of a parliamentary library depends to a great extent on a competent staff having information on all topics concerning legislatures and willing to help the members who usually have little time for research and thorough study of the subject. A true librarian therefore is not a 'book-lifter' but a philosopher and a guide to the reader in the wilderness of books. This however requires enough time and literature at the disposal of the library staff, who are usually men of literary habits and of high academic distinctions. And a true library is not a 'collection of books' for books are no better than dead bones unless they are stirred to life by a competent librarian. They must be selected, classified, catalogued, intelligibly displayed and brought to the notice of the members. They

then become a living entity with wonderful potentialities for service during the discussions in the House. Besides the service rendered to the members a good library with a competent staff has the distinct advantage of limiting requests for information at question time; for the government need not be troubled for facts and figures which are readily available from the library, with all time wasting and expense. Even if such questions are asked they may be referred to publications stocked in the library.

CHAPTER X.

FORMS AND RULES OF DEBATE.

"Order is Heaven's first Law."

1. MOTIONS.

In this chapter we shall discuss the way in which the debate in the house is initiated, conducted and how the decision of the house is taken. The intention is to deal with the general rules of debate irrespective of the nature of the business discussed. The proper form to start the debate on any subject is a definite motion to that effect. There are certain motions that require notice and these can be moved by the Member in whose name a notice stands. But in the case of a member of the Government, the practice is not so strictly followed. A motion is made in the same form in which the notice is given.

A motion having been made the chair proposes the question repeating the terms of the motion and the discussion begins. During the course of the discussion subordinate motions may also be made affecting the main question e. g. the motions for amendments. These are called subsidiary

motions as distinguished from substantive motions on which they depend. Subsidiary motions are of 3 kinds.

Firstly ancillary motions which are recognised as the proper way of proceeding with the various kinds of business e. g. the various stages of a bill, its first reading, second reading, third reading and other motions connected therewith. Secondly there may be dilatory motions e. g. the motions for adjournment for purposes of debate which supersede the original issue before the house. Thirdly there are amendments or amendments to amendments and so on, which depend upon another main question and merely seek to modify it.

A motion must not raise a question substantially identical with a question on which the house has given a decision in the same session. A motion that has been moved a withdrawn cannot be repeated during the same session.[1] A motion when moved is the property of the house and cannot be withdrawn except by its permission.[2]

2. AMENDMENT.

The amendments are the most complicated of all these three. From the point of view of their forms, amendments or amendments to amendments are divided into 3 classes.

1. Those which propose to delete some part from the main proposition. In such a case the form of the question put by the Chair is "That the words proposed to be left out stand part (of the

1. L. A. D. 27-9-1922
2. L. A. D. 27-2-1925. P. 1734.

bill or resolution)." The effect of negativing this amendment is to prevent any other amendment being moved to the words ordered to stand part. If the amendment is carried the main question may be put with those words ommitted.

2. Those which move for substitution i. e. omitting certain words and replacing them by certain other words. In such cases two questions are separately put by the Chair. In the first place the chair puts that "The words proposed to be left out stand part." If it is agreed to, the main question may be put. If however it is negatived the second question is put that "The words proposed to be substituted be inserted there". If it is agreed to, the main question as amended may be put. If it is negatived, a new substitution may be proposed and the proceedings begin as when an addition is made.

3. Those amendments which propose merely to add or insert words. These present little difficulty and the proper form of the question put is "That those words be added or inserted there". If this question is agreed to, the main question, as amended is put; otherwise the motion is put in its original form.

But amendments are out of order—

(1) if they are irrelevant, defective, meaningless or ungrammatical.

(2) if they are inconsistent, repetitive or when they come too late when the provisions relating to them have already been ordered to stand part.

(3) if they propose to leave out words in order to re-insert them as part of substituted words.

(4) if they propose amendments to motions for closure.
(5) if they have merely the effect of a negative vote.
(6) if they widen the scope of the original motion.

The mover of an amendment must formally move the amendment before proceeding with his speech, and must give its copy to the Chair, if it is not already on the order paper. An amendment on the order paper may be altered[1], before it is moved, with the permission of the Chair. But an amendment cannot be moved by a member on behalf of another.[2] It was also ruled in the Legislative Assembly on 17th September, 1929 that a member speaking on an original motion without moving an amendment cannot move an amendment subsequently. In the same house it was also ruled on 15th September, 1925 that the members tabling amendments were not bound to be called out by the Chair unless they rise in their seat and catch the eye of the Chair in proper time in order to get a chance to move the amendment standing in their names.

The President of the Legislative Assembly ruled on 9th September, 1925 that it was at the discretion of the chair to select amendments on the order paper and to decide the order in which the Chair should call the members whose amendments were in order. The amendments must not be inconsistent with any previous decision[3] nor are they to anticipate later resolutions[4]. The mover

1. L. A. P. 27-1-1926 p. 356
2. „ 27-3-1928 p 246
3. „ 21-3-1922 p 3523
4. „ 7-9-1922 p. 201

of an amendment has no right of making another speech in reply[1] to the speeches delivered before. An amendment when once moved into the house can be withdrawn only with the consent of the Chair[2].

3. Closure.

If the discussion is prolonged on a motion any member may move for its closure. If the motion for closure is accepted by the Chair and the house, the issue under discussion is forthwith put after the speech of the original mover and the Member of the Government in charge, if necessary. But the motion for closure can be put to the vote of the house only when it is accepted by the Chair, for even when a majority of the house may think in one way, it is a well established parliamentary practice that the minority have freedom of speech and the chair has a right to protect their rights.[3] But when once the motion of closure has been accepted by the Chair, the final decision rests with the House[4]. No debate is allowed on a motion for closure.[5] And when the motion has also been accepted by the House, no amendment of the original motion is in order[6].

4. Division.

At the conclusion of debate on a motion before the house, the chair rises to put the question

1. L.A.D 22-3-1929 p 2034
2. ,, 18-1-1922 p. 1729
3. ,, 18-3-1921 p. 1276
4. ,, 27-9-1921 p. 1102
5. ,, 18-3-1925 p 2629
6. ,, 23-3-1922 p. 3649

repeating the original motion with the preface "The question is that..............". He then proceeds to take the opinion of the house by saying, "As many as are of that opinion say 'Aye' and as many are of the contrary opinion say 'No' " and announces his provisional decision whether in his judgment the 'Ayes' or the 'Noes' have it. If his judgment is challenged, the division bells are ordered to ring usually for two minutes so that all the members who are in different parts of the Chamber might gather. But members agreeing with the provisional decision of the Chair cannot claim division.[1]

After two minutes the bells stop and doors are closed after which members are not allowed to come inside the chamber. The question is again put. If the decision of the Chair is still challenged, members are asked to retire into the 'Ayes' and 'Noes' lobbies bordered on all sides of the house. Sometimes when the Chair considers a division unnecessarily claimed, he can ask the members in favour to stand up in their seats instead of dividing in the lobbies, but this must be done only after the division bells have rung. The decision of the house is announced by the Chair and in case of equality of votes the Chair exercises his casting vote. Divisions of an obstructive or frivolous nature may not be allowed. A member voting under a misapprehension is entitled to have his vote corrected, if he brings it to the notice of the Chair before the division is closed. But a member not going to the lobby in proper time is not allowed to vote.[2] Undue

1. U. P L. C. P. 7-12 1921
2. L. A D. 16-3. 1928 and 16-3-1922.

influence over members to vote in a particular lobby is a "serious offence. The question is one of important principle. The working of this Assembly is based upon the right of free speech and any invasion of that right calls for the severest rebuke from the Chair – and the Chair may always be relied upon to uphold it."[1] Similarly it has been ruled in the Legislative Assembly on 13th March, 1928 that the House is not a place to make propaganda.

5. Rules for Addressing the House.

A member wishing to speak rises in his place. The case of those who are infirm and sick is, of course, different. With the permission and general consent of the house they may be allowed to keep sitting while addressing the house. If more than one member rise in their seats the Chair chooses which member is to speak first.[1] A member cannot make a speech unless he has been called to do so by the chair.[2] It would be interesting to note here that in the House of Lords, unlike the House of Commons, it is not the Chair but the House itself which calls upon the members to speak. A member speaks either from his seat or from the rostrum so that every member may distinctly hear him.

In the House of Lords a member addresses his speech to the rest of the house; in the House of Commons the speeches are addressed to the Speaker according to the well established practice as the Speaker used to be the mouthpiece of the

1. L. A. D 26-1-1922.
2. L. A. D. 23-9-29, P. 1442.

house. In India the practice of the House of Commons is followed and all speeches and suggestions are addressed to the Chair. It has the distinct advantage of preventing the debate degenerating into personal attacks and recrimination between members or desultory conversation. Even addressing the house as "President and Members of the house" is not in order as it is only the Chair which can be addressed[1].

A member may read extracts from documents but his own speech must be extempore. The prohibition of reading speeches discourages rhetoric and puts a premium on the debator's talent of finding his points in the earlier speeches. In exceptional cases however the Chair may not object to the reading of a speech from a member if he feels shy in speaking extempore. This concession was much utilised by the depressed class members of the fourth Legislative Council, who were sent in by the electorate to mock the Legislatures.

6. Language of the House.

English is the official language recognised by the Government of India Act, 1935; although any member who is not fluent in English may address the house in his own language. But the Chair may call upon a member to speak in any language in which he is known to be conversant. In the Assembly members are required to give notice of all motions in English; but if any member is unacquainted with English, the Secretary, if requested, may get translated a motion or amendment in such language

1. L.A.D. 24-2-21. P. 382 & 389

as the Chair may direct. Similar practice is followed in the case of the Provincial Legislatures.

On the 27th September 1921, at the conclusion of the speech delivered in Urdu of Maulvi Miyan Asjad-ul-lah, Rao Bahadur C. S. Subrahmanyam enquired if there was any rule under which the speech could be translated into English. The President said, "The appointment of an official interpreter has not yet been considered. The speech will be printed both in the original and in a translation in the official report and that for the moment, I think, must satisfy the Hon'ble Member from Madras.[1]"

With the wide extension of franchise and the enlarged legislatures the question of language spoken in the legislatures in India is bound to attract considerable attention, particularly amongst the members not well conversant with English. It may therefore be not out of place to relate the procedure followed in this respect in other countries of British Empire having more than one language.

In the Canadian Dominion "either English or French language may be used by any person in the debates of the House of the Parliament of Canada and of the Houses of the legislature of Quebec and both those languages shall be used in the respective records and journals of those Houses ; and either of those languages may be used by any person or in any pleading or process or issuing from any court of Canada established under this Act, and in or from all or any of the courts of Quebec. The Acts, of the Parliament of Canada and of the legislature of Quebec shall be printed and published

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1. L. A. D. 27-9-1921, p. 1094.

in both those languages." (Sec. 113 of the British North America Act, 1867).

The standing orders of the House of Commons in Canada provide as follows:—

"47. All motions shall be in writing and seconded before being debated or put from the Chair. When a motion is seconded, it shall be read in English and in French by Mr. Speaker, if he be familiar with both the languages; if not Mr. Speaker shall read the motion in one language and direct the clerk at the Table to read it in the other, before debate.

72. All bills shall be printed before the second reading in English and French languages."

Thus in both the Houses, bills, orders and Journals are printed in both languages but on separate sheets, although 199% of the proceedings in the Senate are in English. Both French and English versions are given Royal Assent. In 1934 an Act was passed by the Dominion Parliament providing for the setting up of a Bureau of Translation, under a minister of the Crown, to deal, not only with the translation work of both the Houses, but of all departments of public service.

In New Zealand English is the only official language but Maori Members are permitted to speak in Maori and are allowed an interpreter. But bills and proceedings are printed only in English.

In the Union parliament under Section 137 of the South Africa Act, "Both the English and the Dutch languages shall be the official languages of the union, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights and privileges; all records, journals and

proceedings of Parliament shall be kept in both languages, and all bills, acts and notices of general public importance issued by the Government of the Union shall be in both the languages." (Dutch includes Afrikaans as provided in Section 1 of Act No. 8 of 1925). Even daily prayers are read on alternate days in English and Dutch and all Parliamentary records and documents are also bilingual. Similar practice is generally followed in the province too.

In Transvaal the practice is slightly different but a member may speak in either of the official languages. Notice of motions and questions and other documents connected solely with the work of the Council are translated by the council staff. The estimates are made up in both languages line by line.

In South-West Africa the official languages used in the Legislative Assembly are English and Afrikaans, and under Section 22 (4) of the Constitution any member may address in German, but no interpreter is employed.

Article 4 of the Constitution of the Irish Free State says that "The national language of the Irish Free State (Saorstat Eireann) in the Irish language, but the English language shall be equally recognised as an official language............"

In Malta also debates are conducted either in English, Italian or Maltese.

7. Rules of Debates.

A member while speaking must be relevant to the issue before the house. The chair enforces

relevancy by calling the member to order and if he persists in irrelevancy he can ask him to discontinue his speech.

Members may not speak more than once on the same question even if the debate on that question is adjourned and resumed days or weeks later. But at the conclusion of debate a right of reply is allowed to the mover and the Member of the Government in charge. A member may however rise to a point of order or make personal explanation or address queries with the permission of the Chair, but in this he must be as brief and appropriate as possible. Interruptions should be avoided as far as possible and they are tolerated only when they are absolutely necessary and when the member speaking gives way. A member interrupting should rise in his seat and speak distinctly. Interruptions must not be argumentative and must not exceed certain limits making a speaker unable to continue his speech.[1] It is not parliamentary behaviour to be constantly interrupting.

But a member while speaking should not refer to any matter of fact on which a judicial decision is pending. Nor should a member make a personal charge against another member. The use of offensive expressions regarding the conduct of the Legislatures or any expression reflecting upon the conduct of His Majesty, the King Emperor or any court of law in exercise of its judicial function, are prohibited in the legislature. Similarly to utter treasonable, seditious, defamatory words or the use of the right of speech for the purpose of wilfully

1. L. A. D. 19-3-1923, 22-9-1924, 19-3-1926, 14-3-1924.

and persistently obstructing the business of the house are not allowed in the legislatures.

It is not in order to cast reflections on the conduct of the Chair or the Governor-General or Governor. The reference to the proceedings of the other house should be avoided as far as possible.[1] Similarly the name of the Crown or criticism of His Majesty's Government[2] should be avoided. Members making speech of a personal character or making allegation against another member should be present in the chamber during debate to hear the reply and should not refer to private conversation or meetings. A member reflecting on any decision of the house is not in order except on a motion for rescinding it,[3] for a debate when once finally closed should not be reopened. Characterising a speech as "indecent" "untruth", "intentionally misleading", "rotten lie" have been declared as out of order in the Legislative Assembly. Similarly characterising the house or member as "imbecile" or "as one who were prepared to sell their souls" have been declared out of order.

A member should not repeat arguments already discussed and must not refer to rumours heard outside the house. New matter cannot be introduced by way of reply[4], for the simple reason that other members have already spoken have no more opportunity to speek on the matter. No speech is allowed on the withdrawal of a motion.[5]

1. L. A. D. 27-2-1922, 28-3-1929
2. ,, 26-3-19 2, p. 2919
3. ,, 13-3-1928, p. 1330
4. ,, 31 1-1927, p. 30P0
5. ,, 22-2-1922, p. 3581

8. RULES OF CONDUCT FOR MEMBERS NOT SPEAKING.

While a member speaks, others must keep silent and restrict their movements as far as possible in order to create an atmosphere for thoughtful deliberation. In case they leave the house they should leave it with decorum. The established practice is to bow to the Chair on resuming or leaving the seat in the house. It is disorderly to cross between the Chair and a member speaking. Reading of books and newspapers is also prohibited, although it might be overlooked on the assumption that it is preparation for a debate, nor should the official members do their office work in the chamber.[1] It is also irregular for members to loiter on the floor of the house after a division has been ordered or to go convassing into a lobby.

9. MAINTENANCE OF ORDER.

The Chair decides on all points of order arising during the debate and his decision is final, but the members have a right to submit a point of order for the consideration of the Chair.

The Chair preserves order and has all powers necessary for the purpose of enforcing decisions. He may direct any member whose conduct is in his opinion grossly disorderly to withdraw immediately from the house and any member so ordered to withdraw should forthwith absent himself during the remaining of the day's meeting. If any member

1. L. A. D. 22-9-1928.

is ordered to withdraw a second time in the same session, the Chair may direct the member to absent himself from the meetings of the chamber for any period not longer than the remainder of the session and the member so directed should absent himself accordingly. The Chair may in case of grave disorder arising in the house suspend any sitting for a time to be named by him.

CHAPTER XI.

THE LEGISLATURE AT WORK.

"That which is morally wrong, can never be politically right."

1. PRELIMINARY WORK.

The primary stage in a House of legislature in India is not prayers so conspicuous in the House of Commons. The proceedings in a House of Indian Legislature start with the oath or affirmation of allegiance to the Crown. Every elected or nominated member before taking his seat in the House makes at a meeting of the House the following oath :—

"I, A. B. having been elected (or nominated or appointed) a member of this council (or Assembly) do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty, the King, Emperor of India, his heirs and successors, and that I will faithfully discharge the duties about which I am to enter."

In the case of rulers of Indian States who may be members of the Federal Legislature this form is slightly different. They swear (or affirm) in their "capacity as members" of the House. On the other hand a subject of the ruler of an Indian

State swears (or affirms) in his "capacity as member" of the House, subject to one condition i. e. "Saving the faith and allegiance which (he) owes" to his ruler and his heirs and successors. In the case of the members for the Provincial Assembly from Berar, it is understood that, by an agreement between His Exalted Highness the Nizam and His Majesty's Government, the Berar Members will have to take two oaths of allegiance one to the Nizam and the other as in the case of British Indian members.

The Christian members usually kiss the Bible. The non observance of the oath or affirmation disqualifies a member from the membership of the House.

The House, then, proceeds to elect a President or Speaker of the House who maintains order and decorum and conducts the business of the House in a peaceful manner. We have already discussed the functions of the office of the President or Speaker. The Government of India Act, 1919 provided for the appointment of the President of the House by the Governor-General or Governor as was necessary for the first 4 years; but after that period the President was to be elected by the House from amongst its members. Under the Government of India Act, 1935, Section 22 provides:

(1) The Council of State shall as soon as may choose two members of the Council to be respectively President and Deputy-President thereof and so often as the office of President or Deputy-President becomes vacant, the Council shall choose another member to be President or Deputy-President, as the case may be.

(2) A member holding office as President or Deputy-President of the Council of State shall vacate his office if he ceases to be a member of the Council, may at any time resign his office by writing under his hand addressed to the Governor-General, and may be removed from his office by a resolution of the Council passed by a majority of all the then members of this sub-section shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

(3) While the office of President is vacant, the duties of the office shall be performed by the Deputy-President, or, if the office of Deputy-President is also vacant, by such member of the Council as the Governor-General may in his discretion appoint for the purpose, and during any absence of the President from any sitting of the Council the Deputy-President or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council shall act as President.

(4) There shall be paid to the President and the Deputy-President of the Council of State such salaries as may be respectively fixed by Act of the Federal Legislature, and, until provision in that behalf is so made, such salaries as the Governor-General may determine.

(5) The foregoing provision of this section shall apply in relation to the Federal Assembly as they apply in relation to the Council of State with the substitution of the titles "Speaker" and "Deputy-Speaker" for the titles "President" and "Deputy-President" respectively, and with the substitution

of references to the Assembly for reference to the Council ;

Provided that, without prejudice to the provisions of sub-section (2) of this section as applied by this subsection, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

In the case of the provinces similar provisions exist in Section 65 of the Act.

In the case of the provinces similar provisions in office even after the dissolution of the House until the new Speaker is elected by Parliament. In India however the President hitherto ceased to hold office on the dissolution of the house. But as stated above the new Act provides that on the dissolution of Assembly the Speaker shall not vacate his office until immediately before the first meeting of the newly elected Assembly.

Another preliminary act at the opening of a session is the address by the Governor-General or Governor, as the case may be, on the general position of the Government and its future policy.

2. Business of the House.

The preliminaries having been accomplished the House begins to work. There are four main divisions of this work :—

1. critical: the imposition of a check upon the Government by interpellations and criticism.

2. deliberative: the discussion of matters of public importance,

3. legislative: the making of laws and amending of existing statues.

4. the Budget : the estimates of income and expenditure.

The first two are dealt with in this chapter while the last two are discussed in the succeeding chapters.

3 INTERPELLATIONS.

The first hour of every meeting of the House is available for interpellations i. e. for asking questions and answering them. The purpose of a question is to gather information or to bring certain facts to the notice of general public. It is a weapon in the hands of the legislature, for checking the day to day actions of the executive. The right to ask questions was first conferred on the Indian Legislatures by the Act of 1892 and it was repeated in the Acts of 1909 and 1919 and is continued in the new Act. Members not sworn in have no right to ask a question ; although their questions may be given notice of on the presumption that they will be sworn in later.

Generally speaking not less than 10 days' clear notice is required to be given for asking a question. But this period may be shortened with the consent of the member of the Government whose department is concerned.

No discussion is allowed on questions but supplementary questions may be asked. Every member when asking a question has to say whether the question asked is to be classed as starred or unstarred. By starred question is meant that supplementary questions can be asked but no

supplementary questions can be asked on unstarred questions. Nor can supplementary questions be asked on that part of a question which has been disallowed by the Chair[1]. A supplementary question must not go beyond the scope of the main question and must be asked with the permission of the Chair[2]. Supplementary questions have been allowed on a day other than that on which the original question has been replied in the House. The purpose of this is to give time to a member to go through the lengthy correspondence forming part of the reply to the original question[3], if necessary.

The question when once admitted by the Chair should be answered promptly after the expiration of the time allowed for notice. Only the questions that are not disallowed are entered in the agenda and are replied by the member addressed to. In case the member in whose name they stand are absent or the question is not formally put, the answer to it may be given on the ground that it is of public interest, and may be printed in the proceedings. On the request of the questioner questions may also be withdrawn before they are actually put in the House but this can be done only with the permission of the Chair.

The Chair may disallow any question on the ground that it relates to the Provincial Government if the question is asked in the Federal Legislature or that it relates to Federal Government if it is asked in a provincial legislature. No question can be asked in respect of a matter concerning the discharge or the discretionary powers or the exercise

1. L. A. D. 19 8-1926 p. 113.
2. L A D 30-5-1924. p. 2366.
3. L. A. D. 10-9-1935. p. 702.

of individual judgment of the Governor-General or Governor unless the Governor-General or Governor has agreed. Nor can a question be asked either in the Federal or Provincial Legislature in respect of any of the undernoted subjects.

1. Any matter connected with the relations between His Majesty or the Governor-General with any foreign state or prince.

2. Any matter connected with Indian states other than a matter with respect to which the Federal legislature has power to make laws for that state, unless the Governor-General or Governor is satisfied that it affects the Federal or Provincial interests or affects a British subject, and has given his assent to the asking of such a question.

3. Any matter, connected with the tribal areas or the administration of any excluded area (save with the consent of Governor-General or Governor in his discretion).

4. Any matter pertaining to the personal conduct of the Ruler of an Indian State, or of the member of a ruling family thereof, (save with the consent of the Governor or Governor-General in his discretion).

The President or Speaker decides whether a question is or is not admissible under rules and can disallow any question when in his opinion it abuses the right of questioning or when the question is of a nature which obstructs or prejudicially affects the procedure of the House. He can also disallow it if it infringes the rules as to the subject matter of questions. But when a question is once admitted, no member can question its validity. Members must rise in their seats to get answers to questions,

A question should not contain statement of facts unless they are necessary to make the question intelligible nor should they contain epithets or controversial, ironical or offensive expressions. If any statement is made in the question, the member so stating is responsible for the accuracy of that statement. They must not refer to the character or conduct of any person except in his official or public capacity and they must not be of excessive length.

In 1924 the President, United Provinces Legislative Council ruled that questions the answers of which are available in public documents need not be asked in the House and the information should be sought by members themselves. Similarly questions asking for detailed statistical information may first be addressed to the department concerned and they may be brought before the House only when the department fails to give satisfaction. Again, a question should be self-contained and not based on reference to newspaper reports.

A question should not be suggestive for a definite action, as questions are intended only to elicit information and not to make recommendations. In the Bombay Legislative Council a member asked the Government whether they will inform that they would prepare a manual for the Satara district. The President declared that it was out of order as it was suggesting a particular line of action. The proper way of asking such a question was whether the Government had any intention to do so or consider the desirability of doing so.

A question should not be put in the form of cross examination. The President, Bombay Legis-

lative Council ruled that questions are asked only for the purpose of eliciting information.

A question should not be argumentative. In the Legislative Assembly a member enquired whether a hotel was purchased for the members of the Central Legislature, if so whether certain officials were residing therein. The Government answered that the hotel was lent to officials as they paid more rent. The member, then, characterised the action of the Government as a breach of faith. The President ruled that it was an argument rather than a question.

Questions should not contain objectionable matter. In the House of Commons offensive insinuations and expressions were done away with by the Speaker ; but the questioner insisted that without these the question will be unintelligible and that he did not propose to put it. It was ruled that such questions could not be allowed to be put.

A question can only be put in the form in which it is printed in the agenda. When a question was misprinted in the Legislative Assembly the President ruled that a question could be put only in the form in which it appeared in the agenda.

Reference to answers given in the other House should be avoided as far as possible. On 23rd March, 1922, Mr. Denys Bray in answer to a question of Mr. Shahani in the Legislative Assembly referred to an answer given in the Council of State, the President remarked, "I hope that members of the government in framing their answers will bear in mind the fact that reference to the proceedings in another place should as far as possible be avoided."

In the United Provinces Legislative Council, on February 27, 1925 the Government refused to answer a question while it was duly admitted by the President and on a point of order from Pt. Govind Ballabh Pant, the President ruled that the Government could refuse to give information on certain matters, even when the question was duly admitted by the President of the House.

It is not necessary at all times that only the member of the Government in charge of the department shall answer a question. On February 28, 1924 the President, United Provinces Legislative Council ruled that the question may be answered by the head of the department or secretary to the government if the member of Government so desires. Long annexures to answers to questions need not be printed, but may be supplied only to the members concerned. In the United Provinces Legislative Council on February 21, 1928 the President ruled that when a question is called the member concerned, if present, must rise if he wishes to have the answers recorded.

4. Motions for Adjournment for Purposes of Debate

Interpellations are only a device to collect facts and figures regarding certain actions of the Government; but it affords no opportunity for passing judgment over these actions. A motion for adjournment is meant to meet that end. It furnishes a means by which any act or omission of any department of Government may be criticised and even censured. Such a motion for adjournment must raise a definite matter or urgent public importance

and may be made with the permission of the Chair.

Leave to move the motion must be asked for after questions and before the list of business for the day is entered upon. The member asking for leave must, before the commencement of the sitting of the day, leave with the Secretary a written statement of the matter proposed to be discussed.

If the Chair is of opinion that the matter proposed to be discussed is in order, he reads the statement to the House and asks whether the member has the leave of the House to move adjournment. If objection is taken the Chair requests those members who are in favour of leave being granted to rise in their places, and if a prescribed number of members, which varies from province to province rise in their places the Chair intimates that leave is granted and that the motion will be taken at a time to be named when the business of the day may terminate. If less than the fixed number of members rise, the Chair informs the member that he has not the leave of the House.

Even when a motion for adjournment is allowed by the Chair, the Governor General or Governor, as the case may be, may disallow it on the ground that it relates to a matter which is not primarily the concern of his Government or that it is against public interest and, if he does so, the motion for adjourment cannot be moved.

An interesting discussion took place in the Legislative Assembly on 3rd September, 1936 on Mr. Satyamurti's motion for adjournment relating to "the failure of the Government of India to enforce

strict neutrality on the part of the Local Governments in respect of political parties and their propaganda for the ensuing provincial elections specially in the North-West Frontier Province." The notice of the motion was duly given to the Secretary of the Assembly but before the motion for leave to move the adjournment could be made in the House the President announced that the motion has been disallowed under rule 22 (2) of the Indian Legislative rules. A point of order was then raised whether such disallowance was in order Mr. Satyamurti's contention was that under the said rule "... the Governor-General may disallow any motion for adjournment" only when it reaches the stage of a motion; and that it does not reach the stage of a motion until leave to move the motion is asked for by the mover and the chair states that the leave is granted. "Till that stage is reached the Governor-General does not come into the picture at all...(and) he cannot disallow leave to ask for an adjournment." After hearing the views of the other side the President of the Assembly next day stated the procedure in respect of such motions "The first stage is the giving of notice to the Secretary of a motion for adjournment which an Hon'ble member wishes to move, and then the President has to see whether the motion is in order according to Rules and Standing Orders of the House. Then he ascertains from the members of the Assembly whether the Hon'ble Member who has given notice has leave of the Assembly to move the motion. If any objection is taken, he has to find out whether not less than 25 members are for leave being granted, and then he puts down

the motion for being heard at 4 o'clock the same day." Referring to the time when Governor-General could disallow a motion for adjournment the President ruled that "the proper time at which the Governor-General is expected to pass an order, if he so chooses, disallowing a motion notwithstanding that it has been consented to by the President is after the consent of the President has been given."

The right to move an adjournment for the purpose of discussing a definite matter of urgent public importance is subject to the following restrictions, namely :—

1. not more than one such motion will be made at the same sitting ;

2. not more than one matter can be discussed on the same motion, and the motion must be restricted to a specific matter of recent occurrence;

3. the motion must not revive discussion on a matter which has been discussed in the same session ;

4. the motion must not anticipate a matter which has been previously appointed for consideration or with reference to which a notice of motion has been previously given ; and

5. the motion must not deal with matter on which a resolution could not be moved.

If the motion does not comply with any of the foregoing rules, it is to be ruled out of order. Thus motions of adjournment affecting relations with Indian[1] princes or reflecting[2] on the conduct of judges or matters sub-judice[3] have been declared out of order in the Legislative Assembly. Similarly

1. L. A. D. 9-6-1924 p. 2812
2. „ 25-2-1924. p. 925
3. „ 20-9-1921. p. 581

a motion not concerning primarily a particular Government is out of order. Thus the motion on 6th April, 1921 in United Provinces Legislative Council drawing attention of the United Provinces Government to the Oudh and Rohilkhand Railway strike was declared out of order as it was not the concern of the provincial government, nor was the motion of Pt. Madan Mohan Malaviay on the 25th February, 1924 in the Legislative Assembly regarding *Akali Jatha* was in order as it was not primarily the concern of the Government of India. Various other motions were not admitted as the Chair did not consider them to be either definite and urgent or of recent occurrence. In the United Provinces Legislative Council an adjournment motion regarding Mr. Montague's resignation was disallowed on the 11th March, 1922 on the ground that a resolution could not be moved on it.

In the Legislative Assembly a motion anticipating matter already appointed for discussion was disallowed. Similarly on the 13th March, 1925, the late Pt. Moti Lal's adjournment motion to discuss the action of the Government in failing to provide an opportunity to the House to discuss the Reforms Enquiry Report was ruled out of order as it anticipated a motion of which notice had already been given by another member under the Home Department demand. Contrary to this, however on the 10th March, 1928 Mr. Jinnah's motion of adjournment to discuss the announcement regarding the Sandhurst Committee Report was declared in order although there were motions for reduction on the same matter under the Army grant which was soon to be discussed. The ground which the

Chair gave in support of allowing the motion was that "no one could say with any degree of certainty that the (cut) motion would be reached, ...
...............There is no reason why the Hon'ble member should take any risk." It was then finally ruled that the motion in such cases was not barred by anticipation.

In the Legislative Assembly on the 25th February, 1926, Mr. T. C. Goswami sought to move the adjournment of the house to discuss the hunger strike of certain state prisoners and Sir Alexander Muddiman opposed the motion on the ground that he would not be in a position to give a proper reply on the matter. The President, however, ruled that Government not being in a position to give proper reply is no ground for disallowing a motion.

On Saturday, the 8th March, 1930 the President of the Legislative Assembly announced that, he had received notice of an adjournment motion in connection with the imprisonment of Sardar Patel, but in view of the answer that had been given to a short notice question on the same subject, suggested to the mover that he might wait till certain information had been obtained. A member then enquired if the motion would be in order then, the President said, "The chair would be prepared to waive urgency."

The conduct of the Chair cannot be discussed through any adjournment motion.[1] Nor can the question of privilege, or an attack on the Chair in a newspaper be discussed, through an adjournment

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1. L. A. D. 11-2-1935.

motion;[1] nor can the discretion of the Governor-General or Governor be questioned through a motion for adjournment.[2]

A motion for adjournment has also been ruled out of order for lack of authentic information on which it is based. In the Legislative Assembly on October 15, 1936, B. Mohan Lal Saksena asked for leave to move the adjournment of the house to consider the failure of the Government of India to stop interference by the U.P. Government in election affairs, alleging that 11 patwaris and 2 peons were suspended in Aligarh district for attending an election meeting addressed by Pandit Jawahar Lal Nehru. The President said that he could not accept the motion based on a press report or a private telegram but allowed Mr. Seksena time till the next day to produce evidence in support of his contention. Mr. Saksena however informed the next day that no further particulars were then available on which the President ruled the motion out of order.

At the conclusion of the discussion of a motion for adjournment the mover and the Government member in charge of it may reply;[3] and the only question that may be put is that "The House do now adjourn"; provided that, if the debate is not concluded within two hours it shall automatically terminate, and no question shall be put. If the motion is carried the house adjourns forthwith. If however it is lost or talked out the interrupted debate may be resumed at the point of interruption.

1. L.A D. 4-9-1928
2. U.P.S.C.P. 4-2-1927.
3. L. A. D.25.8. 1925 page 194 and 25-2-1926 p. 1886.

5. Resolutions.

A resolution means a motion for the purpose of discussing a matter of general public interest. Every resolution is in the form of a specific recommendation addressed to the Governor-General or Governor, as the case may be. No resolution can be moved, either in the Federal or Provincial legislature in regard to any of the following sbjects, namely:—

1. matters concerning the discharge of discretion and the exercise of individual judgment of the Governor-General or Governor, unless the Governor-General or Governor has allowed to do so.

2. any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has power to make laws for that state, unless the Governor-General or Governor in his discretion is satisfied that the matter affects federal or provincial interests or affects a British subject, and has given his consent to the matter being discussed.

3. save with the consent of the Governor-General or Governor,

(i) any matter connected with the relation between His Majesty or Governor-General and any foreign State or province; or

(ii) any matter connected with the tribal areas or arising out of or affecting the administration of an excluded area, or

(iii) any matter concerning the personal conduct of the Ruler of any Indian

State or of the member of a ruling family thereof.

(iv) (in case of federal legislature only) on any action taken by the Governor-General in his discretion, in relation to the affairs of a Province.

The decision of the Governor-General or Governor, as the case may be, on the point whether any resolution does or does not fulfil the above provisions is final.

Besides this every resolution must relate to a matter of general public interests; and no resolution is admissible which does not comply with the following conditions namely.

(a) it will be clearly and precisely expressed and will raise substantially one definite issue ;

(b) it will not contain arguments, inference, ironical expressions or defamatory statements, nor will it refer to the conduct or character of persons except in their official or public capacity.

The Chair decides on the admissibility of a resolution, and may disallow any resolution when in his opinion it does not comply with the rules. The House cannot discuss the disallowance of resolutions by the Chair.

There is no objection to a resolution recommending the expenditure of a certain sum of money for expenditure even without the previous sanction of the Governor-General or Governor, as is necessary in other cases, "because a resolution has only the force of a recommendation and the Government need not accept it."..............."It is my opinion that it is perfectly in order, for a member of this Council to recommend the spending or the giving

of a grant of a certain amount of money for any purpose named".[1]

A resolution may be withdrawn. But withdrawal can be moved by mover only,[2] with the permission of the Chair. The mover may also authorise another member to move a resolution on his behalf, and the member so authorised may move accordingly. A resolution on the order paper may not be moved at all[3] if the member so desires.

Amendments may be moved to a resolution but such amendments, should not be beyond the scope of the resolution. Amendments to resolution which enlarge the scope of a resolution altogether are out of order[4].

When a resolution has been moved, no resolution or amendment raising substantially the same question is moved within a period prescribed by rules, usually one year. When a resolution has been disallowed under the rules or has been withdrawn with the leave of the House, no resolution raising substantially the same question is moved during the same session.

The order of the resolutions on the agenda cannot be changed even with the agreement of the members concerned and the Chair. The only way to reach a later resolution is by not moving the previous resolutions and by losing their right to move them at all. In the Legislative Assembly on the 17th February, 1921, Rai Bahadur J. N. Mazumdar, whose resolution stood sixth on the list said that he had got the permission of the members in whose names the previous five resolutions stood,

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1. U. P. L C. P. 4-4-1924.
2. L. A. D. 17. 9. 1929.
3. L. A. D. 23. 3. 1921.
4. L. A. D. vol. 4. 1934. P. 3349.

to move his resolution first and requested the permission of the Chair to do so. The Chair thereupon explained the procedure that "the ballot for bills and resolutions is designed to give members precedence for resolutions in a way which raise no personal questions............ (but) is designed in the interests of the Assembly as a whole. If the members choose after having gained their precedence, to dispense with it in favour of others that is not business of the Chair; but it is the business of the Chair to warn the members that they are depriving themselves of rights legitimately won in the ballot. Therefore it is perfectly open for the Hon'ble members to tell me with the authority of other members that they do not wish to move their resolutions and are prepared to withdraw them.... ..... . ".

A copy of every resolution, which has been passed by the House, is forwarded to the Governor-General or Governor, as the case may be, but any such resolution has effect only as a recommendation.

6. ADDRESS TO THE GOVERNOR OR GOVERNOR-GENERAL.

Addresses are presented by the House to the Governor-General or Governor, as the case may be, usually on matters which come under his prerogative. The Bombay Legislative Council has made frequent use of this procedure. They presented an address to the Governor of Bombay on various occasions. One of these addresses moved on the 16th March, 1934 prayed the Governor to reconstitute the ministry, another moved on the 27th March,

1935 was in connection with the sessions of the House. The one moved on the 29th November, 1935 prayed the Governor to dissolve the Council and asked for fresh elections, while on the 22nd July, 1935 the Council made a request for the appointment of Council Secretaries under the Government of India Act, 1919.

CHAPTER XII.

LEGISLATIVE PROCEDURE.

"The best laws will be no avail unless the younger are trained by habit and education in the spirit of the polity".—Aristotle.

1. THE LEGISLATION IN INDIA.

In a parliamentary democracy legislation is at once the most important field of work. During the early period of parliamentary history statutes were drafted and enacted by the Crown in Council on the petitions of the Commons. The King summoned Parliament, partly for advice, mainly for supply. Having stated his need for the demand, the Commons stated their need in matters of legislation. With the growth of democratic government the Houses of Parliament took into their own hands the drafting of statutes, and their demands for legislation became definite and urgent. These draft statutes are commonly known as bills. In the long run it became an established convention that the bills passed by the Parliament invariably received the Royal assent, hence the supremacy of Parliament.

Indian legislatures are however not so independent. Their powers have been expressly limited

by Acts of Parliament which created them. When an Indian legislature enacts a law, it is bound to see that no provision is passed by them which encroaches upon the limitation imposed by the Government of India Act. These limitations have already been discussed in chapters V and VI. But when acting within these limits, the Indian legislatures are in no way an agent or delegate of the Imperial Parliament but have, and are intended to have, plenary powers of legislation as large and of the same nature as those of the Parliament itself. Any bill or any clause of a bill or any amendment which is beyond the limits of Indian legislatures is ruled out of order by the Chair and, even if by some mistake it is passed into law, it may not be recognised by courts.

2. Introduction of Bills.

In this chapter we are more concerned with the procedure adopted in respect of legislation from the inception of a bill till it becomes an act and the practice followed in India is almost the same as exists in the British Parliament. A bill is not deemed to have been passed by the chambers unless it has been agreed to by both the houses, either without amendment or with such amendments only as are agreed to by both houses. A bill may be introduced in either of the Houses of the legislature. Although as a matter of practice official bills and Finance Bill have been introduced in the lower house. In case of a bill to be introduced by non-official members prior notice is to be given along with a copy of the bill and a copy of the

previous sanction[1] of the Governor or Governor-General if such is necessary under the rules. Besides, any proposal to increase taxation or involving expenditure cannot be made except on the recommendation of the Governor-General or the Governor as the case may be.

From this stage onwards the procedure relating to official and non-official bills is the same. Subject to the special procedure relating to recommended bills which has been discussed at the end of this chapter, every other bill has to pass through 3 stages, namely, the introduction stage, known as first reading, the consideration stage, known as second reading, and the passing stage, known as third reading. When a bill is to be introduced, it is included in the agenda of the day and is called upon by the Chair in its turn. Thereupon the member in charge of the bill rises in his seat and moves for leave to introduce it in the words, "I beg for leave to introduce the..............bill." At this stage the mover does not enter into details and makes as short a speech as possible. It is an established convention now that a motion for leave to introduce a bill is not opposed. But if it is opposed, the Chair after a brief explanatory statement from the member who moves and from the member who opposes the motion, without further debate, puts the question. If leave is not granted the bill does not move further; but if it is granted the member on being called upon by the Chair again rises in his seat and simply says, "I beg to introduce...................bill" and the bill is then

1. For previous sanction rules see chapter V and VI under sub-heading "Restrictions on Legislative powers."

deemed to have been introduced and is published in the official Gazette as soon as possible. But the motion for leave to introduce a bill is not necessary in the case of those official bills which have already been published in the Gazette under the direction of the Governor-General or Governor as the case may be. In such cases, it is formally introduced in the house by the member of the Government in charge. It cannot be opposed at this stage for the simple reason that there is no motion before the house.[1]

When a bill has been introduced its copies are supplied to members. The member in charge may then move for its consideration or that the bill be referred to a select committee to be named in the motion or that it be circulated for the purpose of eliciting public opinion. At this stage only the principles of the bill and its general provisions are discussed. The real question at this stage is whether the house desires legislation of the proposed type at all.

In the committee a bill is more thoroughly scrutinised which is almost impossible in a busy legislature. A committee may hear evidence and take expert opinion for the detailed consideration of the provision of the bill. The select committee cannot reject the principle of the bill which has been accepted by the house. The proceedings of the select committee are held in camera and cannot be published before their presentation to the house. The United Provinces Government in 1922 had issued a press communique dealing with the proceedings of a select committee of the Council

1. L. A. D. 18-8-1926, P. 66.

before it was presented to the house. It was considered to be a substantial breach of privilege of the house and the government member in charge had to apologise.

3. CONSIDERATION.

After the committee stage, the bill is reported to the house and unless it is recommitted or recirculated for eliciting public opinion, it is taken into consideration as soon as possible. During this stage the bill is discussed clause by clause. Owing to the fact that a bill is subject to alteration during its passage, its clauses are disposed of. The point will be clear from what actually took place in the Legislative Assembly in 1922. In the Finance bill of that year the title and preamble with regard to duty on salt were "...to enhance". As however the Assembly did not agree to the enhancement the word enhance was later changed into "fix".

During the consideration stage any member may propose an amendment to the bill which must be in proper form. But due notice which is usually 2 days must be given before the amendments may be moved. The presiding officer may in some cases however waive out this objection. A member not wishing to move an amendment of which he has given notice cannot be compelled to move the amendment[1]. The Chair is the sole authority of judging the relevancy of an amendment. An amendment is not admissible if it alters the scope of the bill. Motions of deletions of a clause are taken only after the motions to amend that clause

1. U. P. L. C. P. 53, 1926

are disposed of. This is meant to improve the clause if possible for in that case deletion may not be necessary at all. New clauses are taken where they suit most. This is known as the second reading of the bill.

4. PASSING STAGE.

After all the clauses have been disposed of there comes the final or third reading. The actual motion at this stage is that the bill as amended (or otherwise) be passed. To such a motion no amendment may be moved except those which are only formal or consequential. The bill is then finally passed or rejected. In the speeches on the third reading of a bill, it is not open to members again to reopen the principle underlying the bill, and a member must confine himself to the application of the principle as enunciated in the clauses of the bill. This is all the scope of the third reading.

The member who introduces a bill may at any stage of the bill move for leave to withdraw the bill, and if such leave is granted no further motion may be made with reference to the bill. But usually leave to withdraw a bill is granted only if there is no dissenting voice.

5. PROCEDURE IN THE OTHER HOUSE.

After a bill has been passed by the originating house, it is sent to the other house where the same process is repeated. If the other house passes it with amendments, the amendments are again put before the original house and the process is repeated unless there is complete concurrence.

But a bill passed by a house cannot be rejected by that very house on return from another house with amendments. On 12th February, 1929, on a motion that a certain amendment made by the Council of State in the Hindu Law of inheritance (Amendment) Bill, which had been passed by the Assembly and sent up to the Council of State, be adopted, Pt. Madan Mohan Malaviya proceeded to attack the bill itself. The Chair intervened and observed, "All these arguments are in favour of rejecting this Bill. The Hon'ble Pandit knows very well that nothing he will say now can entitle this Assembly to reject this measure. The Hon'ble Pandit must therefore confine himself to the amendment before the house."

6. Joint Sitting and Conference.

In case of difference of opinion, there can be only two ways. Firstly that a bill may be allowed to lapse. Secondly the fact of disagreement may be reported to the Governor-General or Governor, as the case may be, who may by modification refer the matter for decision to a joint sitting of both houses convened by him, after six months, in the case of Federal Legislature, and 12 months in the case of the Provinces having two chambers, have elapsed from the date of the reception of the bill by the other chamber. In case a bill affects finance or any matter which concerns the discharge of functions in his discretion or is subject to his individual judgment, the Governor-General or Governor, as the case may be, may hold a joint session forthwith. Usually the President of the

upper house presides over such sittings. A majority of the members is required to pass a bill or any amendment and the bill is then deemed to have been passed by both the houses.

Another method of composing difference between two houses is through a conference of equal number of members from both the houses.

7. Final Stage.

Ultimately all bills require the assent of the Governor or Governor-General. The Governor-General may give assent or withhold assent or reserve his assent. He can also request the reconsideration of a bill or of its amendments. He has also the power to forbid in the exercise of his special responsibility for the tranquillity of India, the discussion of a bill or amendment thereof. Similar powers exist for the Governor who may assent, refuse assent or reserve his assent or exercise his special powers. An Act assented to by the Governor-General or Governor may be disallowed by the Crown.

A bill does not lapse simply by reason of prorogation of the chambers. Similarly a bill pending in the upper house which has not been passed by lower house does not lapse by the dissolution of the lower house. But a bill which is pending in the lower house or which having been passed by the lower house is pending in the upper house, shall, subject to certain conditions detailed in Section 31 of the Government of India Act, lapses on a dissolution of the lower house.

8. Recommended Bill.

When the Governor-General or Governor has certified that the passage of a Bill in a particular form is essential for the safety, tranquillity, the bill is laid before the House as if it has been passed by the other house notwithstanding that it raises questions substantially identical with one on which the chamber has already given a decision in the same session, and not dilatory motion can be made in respect of such a bill without the consent of the Member in charge of the Government. Where either chamber refuses to take a recommended bill into consideration or makes any alteration therein which is inconsistent with the form recommended, the Chair must, if so requested by the Member in charge of the bill, endorse on the bill a certificate to the effect that the chamber has failed to pass the bill in the form recommended.

The bills when passed are published in the Government Gazette after they are duly assented to.

CHAPTER XIII.

FINANCIAL PROCEDURE

"He who controls the finance of the state controls the nation's policy."

1. The Budget.

The Indian finance system is regulated by the budget system which was first started in the year 1860. The system consists of preparing estimates for the revenue and expenditure for one year in advance and suggesting means for discrepancy, if any, between the revenues and expenditure of the state. Besides these estimates for the coming year, the Indian Budget includes the revised estimates of the year about to close and the "actuals" or closed accounts of the previous year. It is the starting of financial control by the executive as well as by the legislature. In other words the budget defines the object on which public money may legitimately be spent; and it also presumes the limit for the expenditure of money on specified objects which may not be exceeded; and lastly it points out, if necessary, the necessity of raising of funds to meet the expenditure to be incurred on the public service,

All the estimates are submitted in the form of demands for grant department-wise which can be made only on the recommendation of the Governor or Governor-General, as the case may be, Section 37 (1) of the Government of India Act provides:—

A Bill or amendment making provision—

(a) for imposing or increasing tax; or

(b) for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government; or

(c) for declaring any expenditure to be charged on the revenues of the Federation, or the increasing the amount of any such expenditure,

shall not be introduced or moved except on the recommendation of the Governor-Genaral, and a bill making such provision shall not be introduced in the Council of State. Similar provisions have been made for the provincial legislatures. But bills imposing fines or other pecuniary penalties do not come under this catagory.

2. Non-votable items in the Federal Budget.

In the Federal Legislature each house may discuss and vote on the sums specified in the budget except those which are required to meet expenditure charged upon the revenues of Federation. These non-votable items have been specified in sub-section (3) of Section 33 of the Government of India Act, 1935. They are:—

(a) the salary and allowances of the Governor-General and other expenditure relating to his office

for which provision is required to be made by Order in Council ;

(b) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(c) the salaries and allowances of minister,[1] of counsellors, of the financial adviser, of the advocate-general, of chief commissioners, of the personal and secretarial staffs of the Governor-General and of the staff of the financial adviser ;

(d) the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court;

(e) expenditure for the purpose of the discharge by the Governor General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion ; provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed forty-two lakhs of rupees, exclusive of pension charges;

(f) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the

1. Although the salary of ministers is non-votable in the budget, it is to be determined by an act of the Federal Legislature and it cannot be varied during their term of office (Sec. 10 of the Government of India Act, 1935).

functions of the Crown in its relations with Indian States ;

(g) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas ;

(h) any sums required to satisfy any judgment decree or award of any court or arbitral tribunal ;

(i) any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged.

Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion.

But the house may discuss these sums except those mentioned in (a) and (f) although they cannot vote on them.

3. NON-VOTABLE ITEMS IN THE PROVINCIAL BUDGET.

The position is slightly different in the provinces. In the provinces the budget may be presented to both the chambers of the legislature but the Legislative Assembly only can vote on sums specified therein, the upper house having little voice in financial matters. But none of the sums required to meet the expenditure charged upon the revenues of the Province is to be voted even by the Legislative Assembly. They have been specified in sub-section (3) of Section 78 of the Act. These non-votable items are :—

(a) The salary and allowances of the Governor and other expenditure relating to his office for which provision is required to be made by Order in Council ·

(b) debt charges for which the Province is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debts;

(c) the salaries and allowances of ministers,[1] of the Advocate General and of the personal and secretarial staff of the Governor;

(d) expenditure in respect of the salaries and allowances of judges of any High Court;

(e) expenditure connected with the administration of any areas which are for the time being excluded areas;

(f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(g) any other expenditure declared by this Act or any Act of the Provincial Legislature to be so charged.

Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Province shall be decided by the Governor in his discretion.

But the provincial legislature may discuss any of these sums except those mentioned in (a) above without voting on any of them.

4. General Discussion.

In India the budget is usually presented in the beginning of March each year so that all the demands as well as the proposals of taxation may be approved by the legislature before the next financial year

1. Although the salary of ministers is non-votable in the budget, it is to be determined by an act of Provincial Legislature and it cannot be varied during their term of office (Sec. 51 of the Government of India Act, 1935).

begins. In the first year of provincial autonomy, however, provision has been made by Order in Council[1] for such approval within the first six months beginning from the 1st April, 1936 by the Governor of the province. The budget is presented simultaneously in both the houses and is accompanied by a speech from the Member of the Government in charge of Finance. The speech reviews general economic conditions of the year and states important variations between the budget and revised estimates of the revenue and expenditure of the year just about to close. Similar variations in the surplus or deficit of the closing year are also brought out. It also makes certain proposals for meeting the deficit or disposing of the surplus, as the case may be.

There is no discussion of the budget on the day on which it is presented to the house. After its presentation the budget is dealt with in two stages: a general discussion and the voting of demands for grants.

The general discussion of the budget usually takes place a week after the presentation of the budget and for such time as the Governor or Governor-General, as the case may be, may allot for the purpose, which is usually two days. At this stage there is a discussion of the budget as a whole or any question of the principle involved therein, but not of individual demands. A discussion of demands is reserved for a later stage. No motion can be moved at this stage, nor can the budget be submitted to the vote of the house.

1. The Government of India (Commencement and Transitory Provision) order 1936, published in the Gazette of India of the 27th July 1936.

In the general discussion even such subjects as are non-votable may be discussed by the house. A time limit of 20 minutes is usually prescribed for speeches during the general discussion and may further be modified if the programme so requires. The speeches enable the Government to see the trend of opinion in the house and to judge as to how their budget proposals may be dealt with on subsequent stages by the house.

5. VOTING OF DEMANDS FOR GRANTS.

After the general discussion is over, comes the second stage of the budget debate viz. the voting of demands. The demands for grants are put up in groups and each group is discussed usually for two days after which the next group is taken up.

For the first few years after the Reforms of 1919 there was no fixed order for the presentation of each demand, which naturally led to some inconvenience. Since the year 1923 however the practice has been for the Leader of the House to confer informally with non-official members of the various parties, consult their convenience and then issue a list giving the order in which the demands for grants are to be taken. This has been adopted on the analogy of the practice of the House of Commons and is based on the feeling that important subjects should be disposed of first.

Motions are then made to omit or reduce the demands for grants. Such motions are made with two objects ; one is to effect economy and the other

is to obtain satisfaction or elicit information from Government on a particular point. In the first case a motion specifying the amount which is intended to be reduced from a particular item is made. These are known as substantial cuts. In the second case a motion of reduction of a nominal amount, say, Re. 1 or 10 or 100 is made, which is pressed to a division if the Government reply is considered unsatisfactory and may, in some cases, amount to a motion, of censure. These are known as token cuts.

It is not unoften that sometimes these motions of reduction are made really to increase expenditure. This is so because the rules permit of no other way by which an increase in a particular item may be suggested by the house.

The Chair is the final authority to decide the order of the motions. The fact that such a motion appears on the order paper does not mean that the Chair has allowed that motion. A point of order can always be raised when a motion is attempted to be moved and it is always open to the Chair to rule that a motion is out of order.[1] But when a motion is admitted by the Chair, the mover is entitled to reply.[2]

The motions for reduction must be definite and intelligible. It was also suggested in the Legislative Assembly that members moving them may add a short statement of the purpose or subject which they wanted to discuss on each motion so that it might facilitate the government to reply them on the spot;[3] although it is not necessary under the

1. L. A. D. 1931 Vol. VI p. 1225
2. L. A. D. 19?2 Vol. II p. 1329
3. L. A. D. 16. 2. 25. p. 1091—93

rules. Motions of reduction must be relevant to the demand under discussion. A member should not speak beyond the scope of such a motion. Repetitions of questions substantially indentical with the one on which a debate has already been raised is not allowed.[1] Motions of reduction cannot be moved by proxy. In the Legislative Assembly on the 16th March, 1921, Dr. Nandlal wished to move a motion for reductions standing in the name of Rai Bahadur J. N. Majumdar. The Government asked for a ruling as to whether this was permissible. The President then observed "under the rules, he is not allowed to take over a motion from someone else." Motions for reduction of a demand for grant on matters involving change in legislation have been declared[2] in order in the Legislative Assembly; although in the House of Commons there is a convention contrary in this.

Omnibus motions for reduction are out of order. On the 14th March 1922, during the discussion on demands for grant in the Legislative Assembly, Dr. Hari Singh Gour moved that all the demands be reduced by 10 per cent. and the government asked for a ruling as to whether such a motion was in order. The President ruled, "A motion of this kind cannot be put from the Chair. The only motions which can be put from the Chair are those which refer to each individual grant. The motion as it stands is not in order. A general motion cannot be taken under an individual demand for grant."

Motions of reduction on non-votable items are out of order but general questions relating to

1. L. A. D. 14. 3. 29. p. 1877—82
2. " 9. 3. 26 p. 2196

non-votable expenditure can however be discussed as nominal reductions under votable expenditure. On March 13, 1923, Mr. N. M. Joshi moving a reduction under Miscellaneous Railway Expenditure—a votable item—proceeded to discuss annuities and sinking funds when objection was taken that 'Sinking Funds' were non-votable. The President agreed and ruled that "non-votable" items could not be touched. But the next day, Sir (now Lord) Malcolm Hailey suggested that in view of the past practice the President might as an interim arrangement allow the house to discuss general questions relating to non-votable expenditure on nominal reductions of votable items.

When the last day of the days alloted for voting of grants is reached and the discussion is not finished the Chair under the rules is required to put forthwith at fixed time, usually, 5 p. m. on that day every question necessary to dispose of all the outstanding matters in connection with demands for grants. This is technically known as guillotine. A guillotine is a device to bring the termination of financial discussion to a close; for otherwise the discussion on the motions of reduction may perhaps continue for months and months together.

Where, however, the House of Assembly have refused to assent to a demand, that demand is not to be submitted to the Council of State unless the Governor-General so directs, and where the Assembly have assented to a demand subject to a reduction of the amount specified in it, a demand for the reduced amount only is to be submitted to the Council of State, unless the Governor-General otherwise directs. In either of the said cases when

the Governor-General gives directions to present the refused or reduced demand, the demand submitted to the Council of State shall not be for a greater amount than that originally demanded. If the Chambers differ with respect to any demand, the Governor-General is to summon the two chambers to meet in a joint sitting for the purpose of discussing and voting on the demand on which they disagree; and the decision of the majority of the members of both Chambers present and voting is to be deemed te be the decision of the two Chambers. In the provinces however no such procedure is necessary as the Legislative Council has no right to vote on the demands and it is only the Legislative Assembly that determines the disposal of demands.

In case of reduction or refusal of a demand, the Governor-General, if he considers the reduced or refused amount necessary for the discharge of his special responsibilities or to meet sums charged on the revenues of Federation, may restore the amount but the amount so restored should not exceed the amount originally asked for.

Similar procedure is laid down for the provinces where a special security is provided for the expenditure on European and Anglo-Indian education. If provision for this purpose has been made in the last complete year before the provincial autonomy comes into force, then in each subsequent financial year, unless the Assembly by a majority of at least three-fourths of its members refuses the demand, the amount must be included to the extent of the average expenditure for ten years ended on March 31, 1933, unless the total educational expenditure

is reduced below that average ; and in that case only a proportionate reduction is allowed.

6. SUPPLEMENTARY GRANTS.

The budget when once passed by the house, with or without alterations of the Governor-General or Governor, cannot be altered except with the permission of the house. If the government later discovers that an item has been inadvertently omitted or that demands which could not be foreseen at the time of presenting the budget have since arisen or that the amount alloted for any item, proves to be insufficient, the same formality has to be gone through as in the case of original demand. The government has to make a fresh demad, known as supplementary demand and submit fresh estimates to the house known as supplementary estimates. Supplementary estimates are nonetheless looked upon with particular jealousy by legislatures as they may amount to a breach to contract between the government and the legislature.

To the executive government also supplementary estimates prove very inconvenient as they tend to open healed sores and unearth unpleasant controversies. But supplementary estimates are a necessary evil and perhaps the lesser of the two ; for if such estimates were to be totally stopped the executive would by framing liberal estimates of expenditure at the beginning of the year heap up sufficient provision for reserves for unforeseen contingencies. On the other hand supplementary estimates give an opportunity of scrutinizing the administration during the year.

The subsequent procedure in the legislature in respect of supplementary estimates is exactly the same as for budget estimates. Supplementary estimates can be presented in any order. It has been ruled in the United Provinces Legislative Council on the 9th July, 1930 that an exposition of the policy of the Government while dealing with supplementary estimates is not in order. "Debate on supplementary and excess grants (see below) is restricted to the particulars contained in the estimates on which those grants are sought and to the application of the items which compose those grants; and the debate cannot touch the policy or the expenditure sanctioned on other heads, by the estimate on which the original grant was obtained except so far as such policy or expenditure is brought before the committee by the items contained in the supplementary or excess estimates."[1]

7. Excess Grants.

Sometimes it so happens that an excess is discovered only after the expiry of the financial year. In such a case supplementary estimates are impossible. To regularise the excess, however, an excess demand is presented; the procedure with regard to this is the same as for the supplementary estimates.

8. Token Grants.

When a demand is made for a supplementary or an excess grant and it is desired to reappropriate money from another grant the demand which is thus

1. Mays Parliamentary Practice, page 536.

made is technically known as "Token Demand." That is to say, the demand is only for a nominal sum of money say Rs. 100 or Rs. 10 and it is explained in a separate statement how the balance would be met. This is done merely to bring the expenditure in question within the purview of the legislature.

9. FINANCE COMMITTEE.

There is a Finance Committee of the Legislature whose function is to scrutinise proposals for new votable expenditures, to sanction allotments out of lump sum grants, to suggest retrenchments and economy in expenditure and generally to assist the Finance Department by advising on such cases as may be referred to them. The cases in which supplementary grants and excess grants are required are also brought to the notice of the Finance Committee for opinion.

10. WAYS AND MEANS.

The voting of demands for grant completes only one part of the budget debate. It does not grant supplies to the executive government. Ways and means should also be found for raising the necessary funds. This is treated in a bill commonly known as the Finance Bill. But in some provinces the procedure is different. In addition to the standing taxation measures, bills are presented to the legislature to raise additional sums of money if necessary. Prior to the Reforms the practice in the Government of India was to put different

proposals for different taxes in separate bills, but after the Reforms all taxation proposals are included in one Finance Bill introduced year after year. It has been ruled in the Legislative Assembly during the discussion of the Finance Bill on the 24th March, 1921 that the constitutional position of the chambers cannot be discussed on the amendments made in the Council of State.

CHAPTER XIV.

STATUTORY DRAFTING

"One of the most difficult of the problems of modern legislation is how to reconcile the right of criticism and amendment which is properly claimed by a popular legislative assembly with the precision of language, the elegance and symmetry of form, which are the characteristics of a good law." —*Ilbert.*

1. Essentials of bill drafting.

So far we have been dealing with the structure of the legislatures in India with reference to their powers, composition and procedure followed in them. We shall now proceed to discuss the most conspicuous field, namely legislation, in relation to its form. The form of legislation commonly known as statutory drafting or drafting of laws, is rather a difficult task requiring an intimate knowledge of law, considerable legislative experience and high drafting ability.

Montesquie and Austin both have placed great importance on the drafting of laws as often the substance of law is entirely changed by the manner of its formulation. The process of drafting is indeed a long and intricate one.

An able draftsman always keeps four things in view. The first and foremost of them is to give a clear and unequivocal expression to the intentions of the law makers. Ambiguity should as far as possible be avoided ; for the law courts interpret law mainly by following the language of the law and not by reference to the intentions of the legislatures. The same word should always be used to mean the same thing throughout. Names should be used for pronoun even at the cost of repetition. In fact law is a branch of knowledge which is next only to mathematics in accuracy. To secure this end it is essential that, before drafting a bill, its subject matter should be carefully studied and the drafter must also possess a thorough knowledge of the existing state of law and its practice ; as in case of doubt the courts always consider the previous law.

Secondly, the law should be economically worded. No more words should be used than are necessary to make the intention of the law clear. The superfluous words are bound to prolong discussions in the courts. This requires great care and skill. Hence there is a tendency to place bill-drafting in the hands of specialists who become skilled with practice and use terms which have already acquired a settled definition in the courts of law, and who by centralising the process are able to exclude unintentional and mutually destructive provisions.

In the third place the law should be as simple as possible. Technical language should be avoided where ordinary language is not ambiguous. Active voice of the verb is to be used in preference to the passive.

Lastly, there should be uniformity in all the acts of the government. Divergent forms and expressions are bound to cause confusion. Every act must be filled into a general framework. For the sake of uniformity every legislature has an act defining the various terms and expressions used in its statutes. The Government of India as also the provincial governments have the General Clauses Act for this purpose. To sum up the form of the laws should be at once shorter, clearer, better expressed, uniform and less likely to provoke litigation.

In England statutory drafting is looked after by the office of draftsman, Parliamentary Counsel to the Treasury. The ministers and the leading officials in the department responsible for the bill co-operate with Counsel in the inception of bills and the amendments which arise during its process in Parliament. In the Government of India a senior member of the Indian Civil Service is in charge of this work, while in the provinces the work is entrusted to the judicial or Legislative Secretary or to some such experienced officer.

2. ARRANGEMENT OF CLAUSES.

An act, so far as it is not finally passed by the legislature, is called a bill. A bill contains the following parts :—

1. Title:—Every bill has a title describing the nature of the proposed measure. This should be sufficiently wide to cover in general terms all the main provisions of the bill and is amended if any amendment of the bill makes it necessary.

2. Preamble:— The preamble of a bill gives in short the purpose and necessity for the enactment. In England the practice is now generally to dispense with the preamble. The Government of India Act of 1935 has no preamble. In India however the practice is to prefix a preamble to a bill.

3. The enacting formula is as follows:—"It is hereby enacted as follows." The English formula is however a more complicated one and runs as follows :—

"Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:—"

4. Clauses:—The body of a bill consists of a series of numbered clauses each with a description and title printed on the margin. Long clauses are divided into sub-clauses, and the sub-clauses may be further sub-divided. Long and complicated bills are divided into parts and chapters.

A distinction may here be pointed out between clause and a section. So far as the bill is not finally passed by the legislature, its sub-divisions are called clauses ; when it becomes an act its clauses are called sections. In the bill itself they are referred to as sections, as the bill is drafted on the assumption that it will ultimately become law.

5. The first clause:—The first clause of a bill in India generally consists of 3 sub-clauses. In one sub-clause it gives the short title of the bill. When the title of a bill is a long one, a short title is given for the convenience of citation. "This

act may be called the.........of 19......" The short title is also given as a head line of the bill.

The second sub-clause gives the extent of application of the act, while a third gives a date when the act is to come into force.

6. Other clause:—The subsequent clauses form the main body of the bill and they are arranged in such a way that the leading and general provisions are embodied in its early clauses while special, exceptional and local clauses are placed at the end.

7. Repealing clause:—At the end of the bill is detailed in a schedule or clause any repeals that might have been contemplated in the bill.

8. Schedules:—At the end of most bills is formed a set of provisions called 'schedules.' These mainly contain matters of detail dependent on the provisions of the bill. A schedule is as much part of a bill as the main clauses.

9. Statement of objects and reasons:—In India it has been long standing practice to append to every bill a "statement of objects and reasons" which gives the bill a historical background and a sort of commentary of the bill.

10. Table of contents:—When a bill is long one, a tabular "arrangement of clauses" as it is called in England, or "contents" as it is called in India is prefixed to the bill.

CHAPTER XV.

THE INDIAN STATUE BOOK

"We must insist that laws and regulations are not only antagonistic to liberty but are the very conditions of liberty."—Ramsay Macdonald.

1. The Multiplicity of Laws.

No account of the legislatures in India is complete without a brief survey of the laws passed by them. It may however be kept in mind that the Indian Legislatures are not a sovereign body. They are, so to say, a creation of British Parliament and Parliament has still the right to legislate for India. Besides these, the Governor-General and Governors can make acts, regulations and ordinances which have the force of law. On the other hand the Hindus and Muhammadans have their personal laws. These various sources of law make the Indian Statute Book a very complicated one.

Before the transfer of India to the Crown the law was all the more in a state of general confusion. Sir Henry Cunningham described it as "hopelessly unwieldly, entangled and confusing." The first

steps towards codification were taken in 1833 when a commission was appointed to prepare a Penal Code. Lord Macaulay, was the chief figure of the commission. The Code became law only in 1860 and a year later the Code of Criminal Procedure was passed. In October, 1921 a committee was appointed with the Hon'ble Mr. (later Sir) A. P. Muddiman, I. C. S. to deal with the question of statute law revision. The function of this committee was to consolidate and clarify the statute law of India and much improvement was made.

2. Parliamentary Legislation.

We may however divide the Indian statute book under 3 main heads.

The first of these are the Acts passed by Parliament which apply to India. These are of three kinds. Firstly those made directly for India e. g. the Government of India Act 1919, or that of 1935. Secondly those Acts of Parliament which in term apply to India as part of His Majesty's domain e. g. certain provisions of the Merchant Shipping Act 1894 or the Territorial Waters Jurisdiction Act of 1878. Thirdly are Acts of Parliament which apply only to presidency towns and Rangoon, which for certain limited purposes are regarded British settlements.

Besides these acts there are Orders in Council made by His Majesty in Council and they have the force of law in this country. Royal Proclamations and a few rules which were made in England under English statutes also operate in India.

3. Indian Legislation.

A detailed study of legislation in India may be made from Sir Courtenay Ilbert's book, "A brief Historical Survey of Parliamentary Legislation relating to India", published in 1922. The Indian Legislation is of 5 kinds. Fristly there are the old Bengal, Madras and Bombay regulations. The Bengal regulations were the earliest and they often exceeded the authority granted by Parliament. They were therefore collected in 1793 and passed by Lord Cornwallis in the shape of a revised code, and the regulations contained in it date from that year and have been regarded as superseding and repealing all the regulations passed before the date. Later regulation making power was extended to the other two presidencies and continued up to 1834. "Down to that date which is an important epoch in the history of Indian legislation, there were five bodies of statute law in force in India. First, there was the whole of English statute law existing in 1726, so far as it was applicable, which was introduced by the charter of George I, and which applied at least in the presidency towns. Secondly, all English Acts subsequent to that date which are expressly intended to any part of India. Thirdly, the legislations of the Governor-General's Council which commence with the revised code of 1793, containing 48 regulations all passed on the same date (which embraced the result of 12 years antecedent legislation), and were continued down to the year 1834. They had force only in the territories within the presidency of Bengal. Fourthly, the Regulations of the Madras Council,

which spread over the period of 32 years, viz. from 1802 to 1834, and are in force in the Presidency of Fort St. George. Fifthly, the regulations of the Bombay Code, which began with the revised code of Mr. Mountstuart Elphinston in 1827, comprising the result of 28 years of previous legislation, and were also continued, till 1834, having force and validity in the presidency of Fort St. David." (Cowell's History and Constitution of the Courts and Legislative Authorities in India, 5th ed. p. 67). Many of these regulations have been extended to other provinces with or without modifications, either by notification or by express enactment and although most of these have since been repealed yet many of them are still in force.

In the second series come the Acts of the Governor-General in Council after 1833 now called the Acts of the Indian Legislature and the Acts of the Governor-General which are certified under Section 67 (B) as also the acts certified by the Governor of a Province under Section 72 (E) of the Government of India Act, 1919. Thirdly the regulations under Section 71 of the Government of India Act, 1919, which are usually made for backward tracts. The object of such provisions is to provide more elastic procedure for law making. Fourthly the ordinances made by the Governor-General under Section 72 of the Government of India Act, 1919 in time of emergency. Lastly are acts of the local legislatures.

Under the Government of India Act, 1935 the Governor-General can make ordinances and acts and may also issue proclamations. Similar provisions

have been made for the Governor in Sections 80 to 90 and 95.

4. Derivative Legislation.

The practice of leaving subordinate details of legislation to be worked out by rules and orders has been widely established in India. There are therefore statutory rules, orders, regulations and notifications under the authority of Indian Acts and also those under the authority of Acts of Parliament. Besides, there are rules, laws, and regulations made by the Governor or Governor-General in Council for Non-Regulation Provinces prior to 1861, which were confirmed by Section 25 of the Indian Councils Act 1861, which have also the force of law.

5. Indian Statute Book under the New Constitution.

With a clear-cut division of subjects under the new constitution, the Indian statute book needs revision. A thousand provincial and 600 central acts passed during the last 143 years have to be revised and brought into line with the new constitutional machinery. The task is entrusted to Mr. B. N. Rau, a very distinguished member of the Indian Civil Service and one of the ablest Judges in the High Courts of India. These figures exclude amending acts and when it is remembered that these acts were passed during the past 143 years since when both the legislative and administrative machinery has undergone revolutionary changes, the immensity of the task is apparent. It is pro-

bably the first attempt after Lord Cornwallis' revised Code of 1793. The previous reformed constitutions never attempted this work and merely safeguarded the position by passing a general clause stating that the authority proposed in the act took the place of that in the previous acts. This left to the lawyers to do the main job of hunting out appropriate authority and legal basis for various legislative and administrative actions. Now every statute has to be revised and expressed in correct technical language.

A further complication has been caused by the fact that a number of principles involved in the statute law require authoritative interpretation by the law officers of the Crown and India Office and if the experience of Canada is any guide, the revision of the statutes however, word perfect, may leave a large scope for lawyers to move the Federal Court. It may be noted that in Canada although there are only two lists, Federal and Provincial, no less than 1000 leading cases were found on them. The Indian constitution gives three lists, Federal, Provincial and Concurrent and one may not be surprised if these provide the Federal Court an amount of work which may not be anticipated by the framers of the constitution.

Leaving aside the principles involved, the mere revision of the statute is itself a difficult task. One such subject are the Bengal, Madras and Bombay regulations. The former vests the authority in the central government and the latter two in the provincial governments. Internal security under the new constitution is a provincial subject. The problem arises as to how to revise these regulations,

Similarly there are difficulties in the case of the University Acts and Railway Acts. It is understood that an Order[1] in Council in respect of the adaptation of statutes which will incorporate changes in the existing statues would be passed before provincial autonomy is introduced.

1. The order has since been passed and pulished in the Government of India Gazette, Extraordinary of April 1,1937. It is known as the Government of India (Adaptation of Indian Laws) order, 1937. Besides there is also the Government of India (Adaptation of Acts of Parliament) order, 1937.

CHAPTER XVI.

THE ADMINISTRATIVE SYSTEM

"Government of the country could not be carried on without the aid of an efficient body of permanent officers, occupying positions duly subordinate to that of the ministers..............yet possessing sufficient independence, character, ability and experience to be able to advise, assist and to some extent influence those who are from time to time set over them."

1. The Administrative Organisation.

"The backbone of the British administration in India," says Anderson, "is the District Officer, known as the Collector in the Regulation Provinces and the Deputy Commissioner in the Non-Regulation Provinces. The District Officer is generally a member of the Indian Civil Service. He is the real executive chief and administrator of the whole district and is supreme over all other officers in the district." The average size of a district extends about 4500 sqr. miles with an average popoulation of a million souls. The districts number 271 all over British India, each varying in size and population. One district, Vizagapatam in Madras has

an area of more than 17,000 sqr. miles with a population of over 3 millions and exceeds Denmark in both respects. In Bengal Mymensingh district has a population exceeding that of Switzerland. Districts are divided into Tahsils or Taluqas and they are grouped into divisions headed by a Commissioner. In Madras, however, there are no divisions. Between the Commissioner and the Provincial Governors in all provinces except in Bombay there is the Board. of Revenue or its equivalent a Financial Commissioner.

There are other heads of various departments e. g. the Inspector General of Police and Director of Public Instruction etc. At the head of the provincial administration is the Secretariat. Here all the members of government have their offices. The Secretariat is for the covenience of its own working, also sub-divided into departments and in charge of one or more of these departments is the Secretary to Government who has under him a number of Deputy or Under secretaries and a large clerical staff to assist him. The organisation of the Provincial Secretariat and the Central Secretariat follow the same line. The rules of business, which regulate the conduct of the work of the departments are, under the powers conferred by the Government of India Act 1919, framed for the Provincial Secretariats by the Governors and for Central Secretariat by the Governor-General. Decisions on all important matters are taken by the Members of the Government of India in consultation with the Governor-General and by the Executive Councillors and Ministers in consultation with the Governors. It is usual for the Governor-General

or Governor to give interview not only to the members of his cabinet, but also to the Secretaries to the various departments usually once a week.

2. ADMINISTRATIVE SERVICES.

The members of the Government have largely to depend for general and technical advice upon the district and headquarter officers who form the framework of the whole system of administration. They are mostly members of the All-India Services. Besides, there is a large number of provincial and subordinate servants who form a huge bulk of the public services in India. The chief distinction between the All-India Services and the Provincial and subordinate services is that while the former are appointed by the Secretary of State, the latter two are appointed by local governments. The more important rights of the All-India Services are:—

"An All-India Service Officer cannot be dismissed from his service by any other authority than the Secretary of State. He has a right of appeal to that body, if he is adversely dealt with in any important disciplinary matters. The Governor of a province is required to examine the complaint of any such officer who thinks himself wronged by an official superior, and to redress the grievance, if he thinks it equitable to do so. No order affecting his emoluments adversely and no order of censure on him can be passed without the personal concurrence of the Governor and orders for his posting to appointments also require the personal concurrence of the Governor. His salary and 'pension', and sums payable to his dependents, are not subject

to the vote of any Indian Legislatures". On the introduction of the Reforms of 1919 they were given the option to retire before they had completed the normal full service on a pension proportionate to their length of service, if the changed condition did not suit them. In fact, "345 officers of the All-India Services retired under these special terms by the end of 1924. By far the greatest number were officers of from 10 to 25 years service".

In 1924 the strength of the All-India Services was as shown in the following table:—

	Strength.
(1) Indian Civil Service	1,350
(2) Indian Police Service.	732
(3) Indian Forest Service (including the Forest Engineers Service).	417
(4) Indian Service of Engineers (comprising an Irrigation Branch and a Roads and Buildings Branch).	728
(5) Indian Educational Service.	421
(6) Indian Agricultural Service.	157
(7) Indian Veterinary Service.	54
(8) Indian Medical Service (civil).	420
Total.	4,279

3. Growth of the Civil Services.

It will not be out of place to trace briefly the growth of the All-India Services. In the early days the services of the East India Company composed of 3 grades—writers, factors and merchants. There was much of corruption amongst the servants

of the Company as they carried on trade side by side, and the training of the servants was also utterly unsatisfactory. To remedy these defects Lord Cornwallis in 1793 organised the public services on a more satisfactory basis. Every civil servant was then to enter into a covenant not to engage into trade nor receive presents from the 'natives', and to subscribe to the pension. Their emoluments were however substantively increased. These servants were to be nominated by the Directors of the Company but this right was taken away in 1853 when the services were thrown open to competition amongst natural born subjects of Her Majesty. After recruitment all these servants were given due training. The present Indian Civil Service has maintained all these principles with slight modifications and even now they are called covenanted civilians.

The police force was reorganised in 1860 on the recommendation of a commission. Appointment to higher offices were made from the military forces; but from 1893 they were recruited by a competitive examination in England; a smaller number of appointments were made in India by nomination and examination for which Indians were also eligible.

The Engineering service was filled after 1871 mainly from men trained at Cooper's Hill and later on Indian Engineering Colleges were established at Roorki, Sibpur in Bengal, Bombay and Madras while some recruits came from Royal Engineers. Similarly the Indian Forest Service was organised after 1866 and the Education Services were created after 1865. The Indian Medical Service was pri-

marily military in purpose but it lent its officers for civil work.

4. POLICY OF "ASSOCIATION".

After the transfer of India to the Crown in 1858 the Secretary of State took the place of the Board of Directors, but the competitive examination was still held in London so that few Indians could compete and the demand for the inclusion of Indians in these services increased every day. As a result of this the system of "Statutory Civil Service" as against " Covenanted Civil Service " was introduced in 1879 to take Indians by nomination forming one sixth of the total appointment. But the system did not find favour with Indian opinion and the Public Services Commission which was appointed to go into this question recommended in 1886 that a proportion of the posts for which the Indian Civil Service is primarily recruited are to be "listed" i. e. reserved for selected members of the Provincial Civil Service. The Islington Commission that was appointed in 1913 to suggest improvements made further suggestions. Mr. Montague and Lord Chelmsford proposed the recruitment in England was to be supplemented by a 33% recruitment in India.

The Assembly urged more Indianisation, having passed a resolution to that effect, and the Government of India later appointed the Lee Commission to go into the question. For the Indian Civil Service it recommended, that 20% of the superior posts should be made "listed" and that direct recruitment in future should be Indian and European

in equal numbers. For the Indian Police Service direct recruitment was to be in the proportion of 5 Europeans to 3 Indians allowing 20% recruitment from Provincial Services. In the case of Forest, it was 75% Indians and 25% Europeans, for the Indian Service of Engineers it was half and half with 20% reserved for the Provincial Officers by promotion.

The statutory Commission reviewed the pace of Indianisation. "In 1928 in the department known as General Administration which includes the district officers, there were in round figures 630 Europeans out of a total of 5500, if the lower classes of subordinates are excluded." In the Police Services as a whole, there were 600 European Officers and nearly 800 European police sergeants, out of a total of approximately 187,000. In the Civil Medical Departments, there were 200 Europeans in a total of nearly 6,000 fully or partly qualified medical men.

"In the Education Services, there are 200 Europeans out of a total of about 1,500 officers in the higher grades. The subordinate services (which also include men of higher education, mainly graduates of Indian Universities) add 11,000 more to the total." In the Forest Services, there were 240 Europeans in a total of 1600 and in the Engineering Department, 500 Europeans in a total of 7,500. The higher staff of Railways consists of about 1,500 Europeans and 700 Indians; the intermediate grades contain 2,000 Europeans out of 9,000. The total number of employees on these railways is over 800,000. In the Judicial Department from the High Courts down to the lowest grade of judges, there are 230 Europeans out of 2,500.

5. SERVICE IN THE NEW CONSTITUTION.

Under the Government of India Act, 1935, the Secretary of State is to continue to make appointments to the Civil services known as the Indian Civil Service, the Indian Medical Service (Civil) and the Indian Police Service. He is also authorised to make appointments to any service or services which he may deem it necessary to establish for the purpose of securing the recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor-General which the Governor-General is by or under the Act required to exercise in his discretion

The Secretary of State is empowered by Section 247 to regulate the conditions of service of all persons appointed by him and full control is reserved to His Majesty and the Secretary of State over defence and political Services.

Provisions have also been made to protect the services against unlawful dismissal or reduction in rank and for safeguarding the pensions and conditions of service of public servants. Thus no person can be removed by any authority subordinate to that which appointed him and before dismissal or reduction in pay or rank he must be given an opportunity to defend himself. In future, appointments will normally be made for federal services by the Governor-General, and for the provincial services by the Governor. They will also make regulations concerning the services pertaining to their respective governments.

Under Section 264, Federal and Provincial Public Service Commissions are to be established.

Provision is also made whereby the same Provincial Commission may serve two or more provinces jointly; or alternatively, it will be open to a province to make use of the services of the Federal Public Service Commission, subject to an agreement with the Federal authorities. The functions of the Public Services Commissions include holding examinations for entrance to the services and they are normally to be consulted on the methods of recruitment, the principles of making appointment, promotions and suitability of candidates, disciplinary matters and claims for payment of expenses incurred by officers in defending legal proceedings or pensions or injury. Their functions may be extended by acts of legislatures and their expenses will be met by the provinces concerned. Their personnel will be recruited and controlled by the Governor.

The recruitment rules for the Indian Civil Service have recently been amended by a notification of the Government of India sometime in April, 1936. The system of recruitment exclusively by competitive examination has been discontinued. Under the new rules there will be recruitment both by nomination and by competition.

CHAPTER XVII

A BRIEF SURVEY OF THE INDIAN FINANCE.

"Patch by patch is good housewifery, but patch upon patch is plain beggary".

1. Finance under the Company.

Till 1774 the 3 presidencies were absolutely independent of one another and were individually subordinate to the authorities in London. After the Regulating Act and the Pitt's India Act of 1783 the process of centralisation began. As such all taxes were levied and paid to the central government and the provincial governments remained entirely dependent on annual allotments by the central government for the maintenance of their administration and even the most trivial expenditure required the sanction of the Government of India. Centralisation reached its zenith by the Charter Act of 1833 and the arrangement continued even after the Government of India was transferred to the Crown after the Mutiny.

The early policy of the Company was to maximise the revenue and to minimise the expenditure in order to declare a satisfactory dividend. Kaye

gives the following account of the increasing revenue: "Under the administration of Lord Cornwallis 1792-93, the Indian revenue amounted to 8 millions of English money. Under Wellesley's administration in 1790-5 it had risen to nearly 14 millions. At the close of Lord Minto's period of Government in 1813-14 it was set down at 17 millions; under his successor Lord Hastings in 1821-22 it exceeded 21 millions; in 1852, the gross revenue was estimated at 29 millions."

In spite of the continuous increase of revenue finances of the Company were unsatisfactory on account of Wars, which alarmingly added to the debt of the Company. The Company had therefore to approach to Parliament for assistance. At the time of the renewal of the Charter in 1813, an important change was made in the system of keeping accounts of the Company. From 1765 to 1813 the East India Company did not distinguish between its territorial and commercial expenditure. But the Charter Act of 1813 made it necessary for the Company to separate these accounts. Still the period from 1813 to 1833 ended with an increase of 17 milllion pounds in the public debt. In 1833 the Company was deprived of its last traces of commercial monopoly and the Indian Exchequer paid £600,000 for dividends to proprietors of the Indian Stock, and the debt therefore rose from 39.4 million pounds in 1829 to roughly 60 million pounds in 1850.

The main sources of the revenue of India were land revenue, royalties on salt, customs and internal transit duties. The last duty was abolished in 1842 but others continued to expand. At the time of

the Mutiny, land revenue was however the most important source yielding nearly two-thirds of the total revenue of the country, while salt and opium contributed over a fourth.

2. Financial Devolutoin.

The reorganisation of British India on its transfer to the Crown in 1858 was not accomplished by any substantial change in the financial system. In 1859 Mr. James Wilson, who took charge of financial administration had to meet a great fiscal crisis. A debt of £42,000,000 was added on account of Mutiny, thus making the total debt of £98,000,000, while the year 1859-60 showed a deficit of £72,50,000. He therefore, considerably reduced the military charges which in 1859-60 absorbed more than half the total revenue of India, reformed customs tariff and introduced the income tax in India for the first time. Among his financial reforms were the creation of a state paper currency and the establishment of a new system of accounts and of an Audit Board. He could hardly initiate any devolution to the provinces, when he died after a short regime of ten months. But the results of his labours was that in 1863 the deficit was a thing of the past. The total revenue of the whole of India in 1860 was about 64 crores of rupees.

Ten years later during the viceroyalty of Lord Mayo, important steps towards financial decentralisation took place in India. The administration of certain departments was transferred to the provincial governments, which were given a fixed grant

for this purpose, in addition to the departmental receipts, and were also for the first time authorised to allot the revenues assigned to them at their discretion, subject to certain financial rules. The result of this change was that the administration of provincial subjects improved. But still the provinces had little inducement to develop their resources. The success of this measure provided justification for further decentralisation and consequently during the viceroyalty of Lord Lytton in 1877, important heads of revenue e. g. stamp duties, alcoholic excess and income tax collected in the provinces, were now provincialised, while the responsibility of provinces in regard to expenditure was extended to the departments of land revenue, general administration, law and justice.

Besides these provincial heads there were certain heads whose income was divided between the central and provincial governments. Here for the first time arose a classification of revenue heads into central, provincial and divided. Settlement on these lines were made with the provinces for 5 years in 1882, and were revised in 1887, 1892 and 1897.

As the functions of the provincial governments slowly expanded and began to spread into the sphere of social services, financial settlements with them began to assume a quasi-permanent character, but until the introduction of Reforms of 1919, special grants, recurring as well as non-recurring, continued to be an important feature of the system, and they were definitely utilized for the purpose of stimulating and controlling the development of provincial services such as education and sanitation.

3. The Indian Finance After 1919.

The Montague-Chelmsford Reforms are an important landmark in the history of financial devolution in India. The so-called divided heads of revenue and expenditure were abolished; and the subjects of income and expenditure were either wholly centralised or provincialised.

Before the Reforms the provincial budgets were included in the budget of the Government of India. But after the Reforms almost complete freedom was given to provinces in the preparation of their respective budgets. Only the Government of India has to be supplied with some information regarding loans and famine insurance fund. The provinces were also allowed to levy taxes.

It was, however, discovered that the Government of India would suffer a deficit of about 10 crores as a result of the redistribution of the heads of revenue and expenditure. The Meston Report therefore surveyed the relative position and recommended the method of contribution to the Central Government by the Provinces which, it was hoped, will have a surplus. The principle was accepted and the contributions to be made by the provinces to meet to central deficit varied widely in amount from 348 lakhs in the case of Madras, 240 lakhs in the case of the United Provinces and 175 lakhs in the case of the Punjab, to 63 lakhs from Bengal, 56 from Bombay, 22 from the Central Provinces and 15 from Assam and 64 lakhs for Burma, Bihar and Orissa was to make no contribution at all. Subsequently the central sources developed and the contributions were gradually

reduced and finally extinguished in 1927-28.

But the condition of the provincial finances was far from satisfactory. To some extent it was also due to the inelastic sources of revenue of the provincial governments which had deficit budget, year after year. Since the Montague-Chelmsford Reforms, out of 15 years, excluding the Budget year 1936-37, the United Provinces had as many as 11 years of deficit and only 4 years of surplus. The accumulated deficit was Rs. 3,63,45,000. The Presidency of Madras which fared best had 5 years of deficit and 10 years of surplus. The accumulated surplus was Rs. 5,38,83,000. The position of other provinces varies in between these two extremes. Thus the Presidency of Bombay had 9 years of deficit and 6 years of surplus. Their accumulated progressive deficit was 583 lakhs. In Bengal, which has always had a very special complaint to make against the Meston Settlement due to the fact that their permanent settlement does not enable Bengal to increase its land revenue and that more proceeds from their commercial taxes are absorbed by the Government of India, the years of deficit have been 9 and their years of surplus, 6. The accumulated progressive deficit is Rs. 8,45,51,000. In the Punjab, there were 7 years of deficit and 8 years of surplus; and they have an accumulated progressive surplus of Rs. 79,79,000. Bihar has 9 years of deficit and 6 of surplus; their accumulated deficit is Rs. 73,67,000. The Central Provinces have 8 years of deficit and 7 years of surplus; their accumulated deficit is Rs. 1,64,93,000. In Assam there were 10 years of deficit and 5 of surplus. Their accumulated

deficit is Rs. 1,72,99,000. The Government of India, on the other hand, had about 6 years of deficit and 9 years of surplus.

4. Budget Figures.

The following are the comparative figures for 3 financial years pertaining to the Budget of the Government of India.

(In lakhs of rupees)

	1930-31	1934-35	1936-37 as (presented)
Revenue	1,24,60	1,25,10	1,22,77
Expenditure.	1,36,18	1,20,15	1,22,70
	11,58	4,95	7

The Budget estimates as presented for the various provinces in the year 1936-37 and their population are given here below.

(Figures in lakhs)

Provinces.	Population.	Revenue.	Expenditure.
Madras	440	15,90	15,90
Bombay	180	12,04	12,03
Bengal	501	11,49	11,91
United Provinces	484	11,71	12,45
Punjab	236	10,80	10,78
Bihar	324	4,70	4,82
Central Provinces	153	4,81	4,00
Assam	86	2,37	3,00
N. W. F. P.	24	1,70	1,80
Orissa	83	1,63	1,63
Sind	39	3,13	3,13

The revenue figures of the North-West Frontier Province, Orissa and Sind include the Subventions from the Government of India.

5. FINANCE UNDER THE NEW CONSTITUTION.

The financial organisation was reviewed as part of the work of the Round Table Conference. The Peel Committee and the Percy Committee examined the whole question. Detailed investigations were however carried out by Sir Otto Niemeyer whose report was published in April, 1936. These recommendations were embodied in the Government of India (Distribution of Revenues) Order 1936. It provides financial assistance from the beginning of Provincial Autonomy to certain provinces partly in the form of cash subventions and partly in assigning a certain percentage of central revenues to the provinces. The cash subventions are as follows. These will be charged on the revenues of the Federation as grants-in-aid of the revenues of the provinces.

1. The United Provinces: 25 lakhs of rupees in each year of the five years from the commencement of Part III of the Act.

2. Assam: 30 lakhs of rupees in each year.

3. The North-West Frontier Province: 100 lakhs of rupees in each year.

4. Orissa: In the first year after the commencement of Part III of the Act, 47 lakhs of rupees; in each of the next four succeeding years, 43 lakhs of rupees; and in every subsequent year, 40 lakhs of rupees.

5. Sind: In the first year after the commence-

ment of Part III of the Act, 110 lakhs of rupees: in each of the next nine years, 105 lakhs of rupees; in each of the next twenty years, 80 lakhs of rupees; in each of the next five years, 65 lakhs of rupees; in each of the next five years, 60 lakhs of rupees; and in each of the next fives years, 55 lakhs of rupees.

The assigning of certain percentage of central revenues to the provinces will be regulated by the following provision of the order in council.

The percentage whith under sub-section (1) of section one hundred and thirty-eight of the Act (pertaining to proceeds from taxes on income) is to be prescribed by His Majesty in Council shall be fifty per cent. and the sums falling to be distributed under that sub-section in any year among the provinces shall be distributed as follows :—

	Per cent.
Madras	15
Bombay	20
Bengal	20
The United Provinces	15
The Puujab	8
Bihar	10
The Central Provinces & Behar	5
Assam	2
The North-West Frontier Province	1
Orissa	2
Sind	2

(Some of this amount may be retained under Section 138 (2) of the Government of India Act, 1935).

In addition to these subventions the proportion of the net proceeds in each year of any export

duty on jute or jute products which under sub-section (2) of section one hundred and forty of the Act is to be assigned to the Provinces or Federated States in which jute is grown shall be sixty-two and one-half per cent.

CHAPTER XVIII.

A HISTORICAL SKETCH OF THE PRINCIPAL HEADS OF REVENUE & EXPENDITURE IN INDIA.

"*Many things grow in the garden that were never sown there.*"

In the previous chapters we described the development of the financial system in India but no such account would be complete without a glimpse of the principal sources of income and heads of expenditure of the central and provincial Governments.

1. Customs.

Customs duties (the yield from which is now more than the total revenue from all other central taxes) include export duties and import duties. The former are levied on jute, which is an Indian monopoly, on rice and hides and skins. Before the Mutiny, the general rate of import duties was 3½ to 5 per cent. on manufactured goods, the rates being doubled in the case of articles imported from countries other than the United Kingdom,

The financial embarrassments of the Government after the Mutiny compelled it to raise the general rate to $7\frac{1}{2}$ per cent; but the duty on cotton goods remained at 5 per cent. Controversy regarding the cotton duties in the next decade led to their modification in 1879 and to the complete abolition 1882 of all import duties, except on arms and liquors. India was a free-trade country until 1894, when a low tariff of 5 per cent. was imposed in the interest of revenue, and until the Great War customs duties did not occupy a very important place in the budget of the country. The yield in 1913-14 being only Rs. 11-3 crores, i. e., a little more than a third of the total land revenue of the country. For the year 1929-30, on the other hand, the estimated revenue from customs duties actually exceeded the estimated revenue from land by over 40 per cent. The rapid development of this source of revenue is largely due to the financial crisis as a result of the Great War.

The yield from this duty in Budget year 1936-37 is estimated to be more than 54 crores.

2. Income Tax.

Income tax comes next. It was first introduced by Mr. Wilson in 1860. The most striking feature of the Indian income tax is the exemption granted to agricultural incomes by the Act of 1886 which has continued ever since. The tax was levied at a very low rate before war and yielded hardly 3 crores in 1913-14. It has since been raised and its yield in the Budget of 1936-37 is estimated to be more than 15 crores.

3. SALT.

The Salt Tax was transferred to the East India Company with the Diwani of Bengal in 1765. In the earlier years it was administered as a revenue monopoly. But the monopoly has since been abolished and a system of excise has been substituted, the government continued to manufacture a large quantity of salt. It was estimated in 1925 that 35 per cent. of the salt consumption in India is met by the Government salt, and 30% by foreign salt while 35% was manufactured under licensed subject to payment of excise. The rate was raised to Rs. 1-4 in 1916, and to Rs. 2-8 in 1923. It was reduced again to Rs. 1-4 in 1924. The yield from this tax budgeted in 1936-37 is more than 875 lakhs.

4. RAILWAYS, POSTS & TELEGRAPHS.

Of the two commercial undertakings of the Central Government, the Posts and Telegraph Department is not important from the point of view of revenue.

The first railway lines in India were sanctioned in 1845, but it was not until after the Mutiny that Railways were constructed on a large scale. There was at that time no private capital in India for railway development, and construction had to be carried out through the agency of English joint stock companies under contract with the State. The Secretary of State guaranteed a return of five per cent. on the capital outlay, but the surplus profits were shared with the state, which exercised a strict control over the expenditure and manage-

ment of the railways. For many years, however, the railways were not remunerative, and imposed a considerable burden on Indian revenues. All the old "guaranteed" companies have since been purchased by the state, and the railway system of India is now almost entirely owned by the State, though the management in some cases continues to be through companies under a definite contract.

The state railway system of India consists of over 40,000 miles of railway, and the total capital outlay is more than £600 millions. The administrative control of this huge organisation, one of the biggest in the world, is centralised under a Board, consisting of four members appointed by the Government. Under an arrangement sanctioned in 1924, railway finances were first separated from general finances. There is a definite annual contribution from the railways to the general revenue of the country of one per cent of the capital outlay, and this is a first charge on the net receipts of the railways. In addition to this, a proportion, generally one-fifth of the net surplus profits is credited to general revenues, and the remainder transferred to a railway reserve fund. Under the Government of India Act 1935, Railways will be controlled by a Federal Railway Authority.

The net receipts as per Railway Budget of 1936-37 is estimated to be over 31 crores.

5. Other Sources of Central Revenues.

Of the other sources of revenue, only two need to be mentioned here, viz., the currency profits and the tribute from certain Indian States. The former

consists mainly of the profits on the issue of currency notes, of which the Government has a monopoly. The total sum received by the Crown under the last head amounts to about Rs. 84 lakhs, or £630,000.

The yield from opium is almost insignificant now. It was budgeted as 47 lakhs in 1936-37. There was time when its yield was more than 8 crores per annum. The history of abolition of this export trade dates back 28 years. It was in 1908 that the Government of India decided to reduce progressively opium oxports to China with a view to aiding in the supression of drug taking habit in that country. Finally it was announced in June, 1926 that the extinction of the opium export would take place in ten years. Thus from January, 1936 no exports of opium have left the geographical limits of British India for purposes other than medical and scientific. It is indeed creditable how India has contributed towards the solution of one of the curses of civilisation—over indulgence in drugs. The way in which the average annual net receipts (after deducting expenditure) from the export trade have decreased in recent years is shown below.

1910-11 to 1912-13	...	Rs. 801·62 lakhs.
1920-21 to 1922-23	...	Rs. 183·41 ,,
1922-23 to 1924-25	...	Rs. 167·51 ,,
1932-33 to 1933-34	...	Rs. 55·22 ,,
1934-35	...	Rs. 19·35 ,,

6. The Indian Army.

A large amount of the central revenues is spent on army. The budget expenditure on defence

services in the year 1936-37 was Rs. 50,38,00,000. In 1921 of the cost of the army was 82 crores as against pre-war average of 30 crores of rupees.

In this connection it would be interesting to note briefly the growth of the modern Indian army. The great Indian army of today had the most modest beginning in the guards enrolled for the defence of treasures and factories of the East India Company at Surat, Madras, Hoogly etc. The regular system however began in 1748 when Major Strange Lawrence, much like the French, enrolled sepoys for fighting the French and their allies. The army thus gradually grew and fought the hardest battles for the Company although there was small European element in the Army. A reorganisation took place in 1796 when each presidency was allowed to have a regular, independent and self-contained army of its own In 1898 however this system was abolished and Lord Kitchner then reorganised the army on a homogeneous basis. For the better training of candidates for staff appointment in India, a staff college was opened first at Deoli and afterwards at Quetta. The strength of the army was also increased. The pay was enhanced and general conditions of service revised. At the Coronation Durbar in 1911 the coveted distinction of the Victoria Cross was thrown open to the Indian soldiers. The Army thus reorganised made India give a good account in Great War. [1]The total number of Indians who went to Great War was 1,302,000 men, besides 173,000 animals and 3,692,000 tons of supplies and

1. Modern India. P. 75.

ordinance stores. It was stated by the Government on the 7th October, 1936 that during the Great War 62,000 of the Indian army were killed, 67,000 wounded and £113,600,000 was contribution from Indian Revenues to Great Britain during the War. In addition, India bore ordinary maintenance charges of Indian troops overseas which amounted to £33,200,000. Average cost of war pensions has been Rs. 1,15,00,000 per year but the amount is falling gradually.

After the War King's Commissions were thrown open to Indians. In 1919 the Esher Committee was appointed by the Secretary of State to enquire into the post-war reforms of the army. It recommended liberal and sympathetic treatment of all ranks of the army and the removal of certain legitimate grievances. The Committee also recommended the reorganisation of the existing services. In 1923 the Commander-in-Chief announced his scheme of Indianisation commonly known as "Eight Unit Scheme." It means the replacement of British Officers by Indian Officers in due Course. A military college known as Prince of Wales Royal Military College has also been established at Dehra Dun. The Skeen Committee whose report was published in 1927 suggested further Indianisation.

The supreme authority of all army in India is the Governor-General subject to the control by the Crown through the Secretary of State. Until 1906 the Governor-General's Council had a military member, who was in charge of the administrative and financial affairs of the army. In addition to him the Commander-in-Chief was the head of the

Army. But from 1902 both these offices were combined into one and the Commender-in-Chief was made an Extra-ordinary Member of the Viceregal Council. India is divided into four commands in which a General Officer is responsible for the command's administration, training, general efficiency and security arrangements. On the eve of the Mutiny the Indian Army consisted of 39,500 British soldiers, including 2,686 cavalry, 6769 artillery and 30,045 infantry; and 3,11,038 sepoys, including 37,719 cavalry, 11,256 artillery, 3,404 sappers and miners. Thus the proportion of Indians to Europeans in the army was 8·1. "Later on it was decided that the British force should be maintained at a strength of 80,000 and that the Indian element should not exceed it by more than two to one in Bengal and more than three to one in other provinces".

The existing strength[1] of the Indian army is

60,000	...	British troops
1,50,000	...	Indian troops
33,000	...	Auxiliary Force
19,000	...	Indian Territorial Force
42,500	..	Indian Army Reserve
44,000	.	Indian States Forces

Excluding the Gurkhas from Nepal, of the total number of combatants in Indian army 66% come from the Punjab and the North-West Frontier Province and 11% from the United Provinces and 23% from the whole of the rest of India put together.

1. India Office List, 1936, page 27.
Great Britain has an army of 213,000 men.

7. Ecclesiastical Establishment.

The Ecclesiastical Department is much less understood by most people. The East India Company was opposed to any missionary settlement as they thought they would give offence to Indian population by their proselytising activities and thereby they might lose their rich trade. Therefore it was not till 1813 that permission was first given by the Charter Act of that year for missionaries to settle in India. There were then 3 bishops of Calcutta, Madras and Bombay. Since then the establishment of this department gradually grew and various churches were established. The main business of this department is public worship and pastoral functions. Its yearly expenditure is about 30 lakhs of rupees.

8. Debt Charges.

The next important item of expenditure is the interest on the funded and unfunded debt of India. The annual expenditure on debt services is about 13 crores of rupees. The greater portion of Indian debt has been utilised for financing the construction and acquisition of railways and the carrying out of irrigation works, and the value ot the productive assets held against these obligations was estimated at Rs. 873 crores in 1928-29. The unproductive debt, consists principally of India's contribution towards expenditure on the Great War. The deficits in the post-war budgets of the Central Government amounted to only Rs. 171 crores, in 1928-29.

The total debt, both permanent and temporary which was calculated on 31st March, 1934 to be as follows:[1] —

1. In England £ 383,084,473
2. In India Rs. 5,10,82,78,173

(including Provincial Governments but excluding Rs. 63,70,86,983 for post office cash certificate)

The sterling portion includes £ 16,721,003 British War loan, the liability of which, was taken over by India as part of India's war contribution.

9. CIVIL ADMINISTRATION.

The annual expenditure on civil administration comes to Rs. 12½ crores a year. Under this head is also included the administration of various centrally administered areas and also the Foreign and Political Department. The interest and miscellaneous charges as per Railway budget on 1936-37 are over 31 crores.

India pays an annual contribution to the League of Nations. In the year 1936-37, it was budgeted at Rs. 14,31,000.

PROVINCIAL INCOME.

The main source of income of Provincial Governments is land revenue, but it is rapidly ceasing to be an elastic source. In 1933-34 it yielded 30 crores out of the total income of 83 crores in all the provinces. Excise on the other hand yielded 19 crores in the same year. The excise duties were

1. India Office list, 1936, page 26.

levied upon a number of intoxicants and norcotics. The duty varies from province to province and is normally fixed by the executive and not by the legislature. Stamps yielded 13 crores in the same year. Other sources of provincial income are irrigation, forests, court-fees etc.

11. Provincial Expenditure.

The provincial expenditure covers general administration department, police, jails, judiciary, education and the medical service. Education, medical relief and sanitation have attracted considerable attention since the Reforms. Expenditure only on medical relief and sanitation has risen from Rs. 383 lakhs in 1921-22 to Rs. 573 lakhs in 1929-30. The facilities for medical relief are still considered to be inadequate. The total number of hospitals and dispensaries public and private, in 1926-27 for the whole of British India, was 4,205 for a population of 247 millions. In 1933-34 the total expenditure on education In British India amounted to Rs. 26,17,65,186 of which 43·8% came from government funds, 16% from district and municipal boards, 24% from fees, and about 15% from all other sources. The literacy figure for the whole of India is 8%. Law and order consumes a large part of the provincial income. The police force of all ranks all over India aggregates 1,98,000 and differs in strength from province to province. Thus there is one policeman to every 400 of population in the Frontier Province while in the province of Bihar the proportion is one to 2,400.

The area under irrigation in India by Government Works is about 2,98,88,000 acres, nearly a seventh of the whole area under crops in British India. The total capital outlay, direct or indirect on irrigation and navigation works, under construction is Rs. 15089 lakhs. The highest project of its kind in the world is Sukker Barrage and canal construction scheme. Its estimated cost when the scheme is completed is Rs. 2000 lakhs.

CHAPTER XIX.

DEVELOPMENT OF LOCAL SELF-GOVERNMENT IN INDIA.

"A nation may establish a free government; but without the spirit of municipal institutions it cannot have the spirit of liberty."—Tocqueville.

1. EARLY LOCAL SELF-GOVERNMENT.

In the field of the provincial government, local self-government is at once the most outstanding department. The institution of local self-government is not new to Indian mind. "In common with other offshoot of Aryan race, the Hindus had a form of free local self-government long before they had a centralised state." Every village in ancient India was an autonomous political unit. It was of such villages that Sir Henry Maine speaks in his village communities, "which endured in spite of wars and changes of dynasties, in spite of every revolution in the principles of government."

The earliest step in municipal government were in the three presidencies. A corporation composed of Europeans and Indians was established in Madras as early as 1687 for purposes of local

taxation. Later Bombay and Calcutta followed the lead. The Charter Act of 1793 empowered the Governor-General to appoint justices of the peace for the presidency towns to meet the cost of scavenging, police and maintenance of roads. A series of legislative enactments was passed between the years 1842 and 1862 providing for the setting up of municipal institutions in other towns. The acts provided the appointment of commissioners to manage municipal affairs and authorised them to levy various taxes, but in most provinces the commissioners were nominated.

2. Later Developments.

Later local self-government was extended to the rural areas by an Act of 1865 which authorised the imposition of cess on land and a tax on houses for local purposes. Considerable progress was however made during Lord Mayo's Viceroyalty. Municipal activities were extended and elective principle was introduced.

During the Viceroyalty of Lord Ripon, Acts were passed (1883-84) that greatly altered the constitution, powers, and functions of municipal bodies. A wide extension was given to the elective system, while independence and responsibility were conferred on the committees of many towns by permitting them to elect a private citizen as chairman. Scope was also given to increase municipal resources, and financial responsiblity was conferred by transferring some items of provincial revenues to its management. The same general principles are still adhered upto this day.

The result was a very considerable increase in the number of municipal bodies in urban areas with well-marked field of activity. In rural areas, however, despite the general principle laid down, much success was not achieved.

The Decentralisation Commission of 1909 suggested further improvements but the principles of 1882 continued to regulate development. until 1918. Mostly the chairman were district officers and local self-government was only one of their many activities. Even in many towns, the municipality continued to confine its activities to approving the decision of official chairman, and where duties were entrusted to the vice-chairman, he merely usually followed the instructions of the official.

The chief recommendation of the Decentralisation Commission in respect of the institution of local self-government was the revival of the village council-tribunal or panchayats. "While, therefore, we desire the development of a panchayat system, and consider that the objections urged thereto are far from insurmountable we recognise that such system can only be gradually and tentatively applied, and that it is impossible to suggest any uniform and definite method of procedure. We think that a commencement should be made by giving certain limited powers to panchayats in those villages in which circumstances are most favourable by reason of homogeneity, natural intelligence, and freedom from internal feuds. These powers must be increased gradually as results warrant and with success here, it will become easier to apply the system in other villages. Such a policy, which must be the work of many

years, will require great care and discrteion, much patience and judicial discrimination between the circumstances of different villages; and there is considerable consensus of opinion that this new departure should be made under the special guidance of sympathetic officers." In response to this various provincial acts were passed and the system is being gradullay revived.

3. Local Self-Government after 1919.

After the introduction of Montague-Chelmsford Reforms in 1920, the department of Local Self-Government was transferred to the hands of ministers responsible to the legislature. In almost all the provinces the councils used their new powers to make local bodies a more effective training ground for larger and wider political responsibilities. The general trend in the case of most provinces was the same. Almost all aimed at lowering the franchise and at increasing the elected element in local bodies so that almost every local body has now an elected majority and a non-official chairman. In other words the new changes made these institutions more real and active.

4. Municipalities.

The general scheme of local self-Government organisation in India may be divided into two categories, urban and rural. The urban boards are called municipalities. There are some 781 municipalities in India with over 210 lakhs of people residing within their limits. Of these municipalities

about 710 have got a population of less than 50,000 each and the remaining have got a population of 50,000 or over. More than 20 per cent. of the population of Bombay live within municipalities, while only 3 per cent. is the quota for Assam.

The big municipalities of Calcutta, Bombay and Madras constituted by special acts are commonly known as corporations. Others are known as municipalities. Calcutta and Bombay have also established improvement trusts with a view to making provision for the improvement and expansion of the cities by opening up congested areas, laying out or altering streets, providing open spaces for purposes of ventilation or recreation, demolishing or constructing buildings and rehousing the poorer working classes displaced by the execution of improvement schemes. The scheme of improvement trusts has also been extended in other provinces. Improvement Trusts have thus been constituted in Delhi, Lucknow, Allahabad and Cawnpore in the United Provinces.

The municipal government is vested in a body of commissioners or councillors. The councillors of the corporation vary in number from 106 in Bombay to 61 in Madras, mostly elected on a fairly wide franchise, varying from 10% in Bombay to 5% in Madras. In the case of other municipalities about 14% of urban population enjoys municipal franchise. In every town the majority of the councillors are elected, varying from four-fifths of the total membership in Bihar and Orissa to two-thirds in Bengal. The nominated members usually represent minorities, special interest and men of special abilities. All questions are decided by

majority of votes at a meeting. The government reserve the right of suspension of a municipality in case of gross mismanagement, abuse of power, or neglect of duty. The provincial governments exercise their power through District Officers and Divisional Commissioners to whom all the proceedings are supplied by the Boards.

5. District Boards.

The duties and functions assigned to the municipalities in urban areas are entrusted to district and local boards in rural areas. In almost every district of British India except in Assam, there are district boards and sub-district boards.

Throughout India there are some 207 district boards with 584 sub-district boards and more than 800 union committees. The machinery has jurisdiction over a population of 21¼ crores. The majority of the members are elected on a franchise which now gives the vote to a little more than 3.2 per cent of the population. Communal electorate for Muhammedans are provided in the Bombay Presidency and the United Provinces for district boards and in Assam for local boards. Minorities and special interests are represented by nomination. Almost everywhere in the district boards the chairman is elected. Their constitution is much the same as that of the municipalities. Besides, there are other minor units of village government. The panchayats look after such matters like sanitation and wells in the villages. Mostly members are elected. In Madras, Bombay and Assam all the adult males have a right of vote for this election,

6. FUNCTIONS OF LOCAL BODIES.

The main functions of these local bodies are :—

(a) Public Safety : This includes the construction, upkeep, cleansing, watering, naming and lighting of streets and roads ; the protection from fire and from dangerous buildings, the regulation of public nuisances and dangerous trades.

(b) Conservation of public health : The preservation of the public health—principally with reference to the reclamation of unhealthy areas, prevention of epidemic diseases, vaccination, sanitation, drainage and the provision of medical relief through hospitals, dispensaries, supply of midwives, etc., the construction of tanks, washing places, bathing places, parks, etc., comprise an important function of municipalities.

(c) Commercial undertakings : Water supply, gas, and electric supply, the construction and maintenance of bazars, crematoriums, tramways and bus services, etc., are financed and managed by the corporations.

(d) Imparting of education, maintenance of middle or secondary schools, colleges, libraries, museums, social service exhibitions and particularly propagation of primary education, comprise the important function of municipalities. Municipalities make lump grants to schools within their jurisdiction. In some, particularly as regards primary education, they start and maintain free

primary schools. The Calcutta Corporation maintains more than 100 free schools.

7. FINANCE OF THE MUNICIPAL AND LOCAL BOARDS.

Municipalities are allowed a wide choice in the form of the taxes which they may levy. Octroi duties, terminal taxes, taxes on circumstances and property, professions and vehicles, have all been utilised, while for particular services, such as education and water supply, special taxes of cesses are imposed. The total municipal income is 14·03 crores out of which only the four cities of Calcutta, Bombay, Madras and Rangoon together account for 40%.

The Government's control in financial matters is limited generally to cases in which the interest of the general public call for special protection. The Government has the right to alter a municipal budget, if it considers that due provision has not been made for loan charges and for the maintenance of a working balance, and it may intervene in the administration of a council by way of preventing or initiating action in matters affecting human life, health, safety or public tranquillity. But these powers have been rather infrequently exercised.

The main source of rural authorities is a tax or cess levied on the annual value of land and collected with the land revenue, though this may be supplemented by taxes on companies and professional men and by tolls on vehicles. A very large proportion of the revenue of these authorities, however,

consists of subventions from the various provincial Governments. These are given not only as grant-in-aid for particular services, but not infrequently in the form of capital sums for the provision of works of constructions.

It is said that the financial resources are quite inadequate to meet the needs of these local bodies. The grant given by the Local Governments does not make up deficit. In Bombay the Government grants amounted to nearly 60% of the revenue of district Boards. "The most disturbing feature is however the failure to collect taxes imposed by the local bodies. In the municipalities since the Reforms uncollected arrears have been mounting up to very large sums. This feature is referred to by almost every provincial government in reviewing the work of their local bodies and it is a great laxity in this respect." Steps are however being taken to remedy this defect.

8. Local Self-Government under the new Constitution.

Under the new constitution the position of the Local Self-Government remains the same. It remains a provincial subject under the control of a minister responsible to the legislature. List 2 of the 7th schedule to the Government of India Act, 1935 provides that "Local Government, that is to say, the constitution and powers of the municipal corporation, improvement trust, district boards mining settlement authorities and other local authorities for the purpose of local self-government or village administration" together with "Public health and

sanitation ; hospitals and dispensaries; registration of births and deaths" will form part of the Provincial Legislative List. Thus although statutorily the new constitution makes no difference, still it is apt to produce some substantial charges indirectly. The system of nominations to the legislatures has been almost completely brought to an end under the new constitutions. It is therefore not far to visualise of all-elected local bodies. Not very late this question was referred to in the United Provinces Legislative Council. The wide extension of franchise form 3% to about 14% to the provincial lower house and the considerable increase in the number of the constituencies are bound to produce some corresponding effect on these self governing bodies. A general growth of public consciousness in the body politic, as a result of the new constitution, may further give an impetus to the increased activities of the department of local self-government. Panchayats are already increasing. Lastly, finance is also a transferred subject now and the legislature has an effective control over the provincial purse to utilise it for the development of this institution. The effect of the Poona pact is yet to be seen.

CAHPTER XX.

THE INDIAN STATES

"Paramountcy, whatever it is or may be, is quite outside the question of Federation, and remains where it was, with the Crown and the Crown's Governor-General, and no where else."—Sir Samuel Hoare.

1. ORIGIN OF INDIAN STATES.

A study of the Indian system of government however brief, would be incomplete without some account of the Indian states which under new conditions will take active part in the politics of the country. Indian states, as we know them at present, did not originate until the days of Lord Wellesley. In early days the East India Company had no doubt entered into relations with the princes in India but their position at the court of those states was hardly superior to that of a merchant body. The Subsidiary Alliance of Lord Welleseley laid the foundation of the modern protected states in India. By this alliance they were required to maintain at their cost a considerable British Army. They surrendered their foreign policy to the Company and stipulated that they

would entertain no European in service without the consent of the Company. The prince with whom such a treaty was concluded had also to leave his disputes with and claims upon his neighbours to the arbitration of the English. The Company in return guaranteed to the princes their title to the throne and protected them from external aggression. Lord Hardinge carried the policy of Lord Wellesley a step further and while arranging treaties with the native princes made it clear to them that the obligations of an alliance with the Company included a reasonable measure of decent government within a prince's own dominion and many states were later annexed on this ground.

2. Characteristics of Indian States.

The Indian states are in all 562 in number and their area and population are about one-third and one-fourth respectively of that of the whole of India. Their total population is 81,310,845 as against 256,858,787 of British India excluding Burma, and consist of 78% Hindus, 13% Muhammadans, 3% Christian, 3% tribal religion, 1% Sikhs and 1% Jains. They iuclude states of varying size and population. The biggest of them Hyderabad has an area of about 82,700 sqr. miles and a population of over 14 millions, as big as Italy. In other words it is as large as Great Britain and has nearly twice the number of inhabitants of Portugal or Austria. Its revenue is over 7 crores of rupees.

Kashmir State, in the extreme north, is of approximately equal size and has a population of

over 3½ millions. Mysore, in the south, has 6½ millions of inhabitants, with an area of just under 30,000 sqr. miles, so that it is larger than the Irish Free State and has twice its population. Further south are the two densely populated states of Travancore and Cochin, with over 4 millions and one million inhabitants respectively. The territory of the Gaekwar of Baroda, which is made up of several separated areas north of Bombay, includes a population of over 2½ millions.

Other big states are those of Gwalior, Jaipur, Jodhpur, Patiala and Indore which are each equal to small countries outside India. On the other hand there are small states like Lawa, in Rajputana with an area of 19 miles and the Simla Hill States which are little more than small holdings. The Indian States Committee which was appointed in 1927 classified the Indian states as shown in the following table:—

Class of State, Estate, etc.	Number.	Area in square Miles.	Population.	Revenue in crores of rupees
1. States the rulers of which are members of the chamber of Princes in their own right.	108	514,886	59,847,186	42.16
2. States the rulers of which are represented in the Chamber of Princes by twelve members of their order elected by themselves.	127	76,846	8,004,114	2.89
3. Estates, Jagirs and others.	327	6,406	801,674	.74

3. Internal Government.

The internal government of different states varies considerably. About 35 of these have instituted legislative councils invariably of a consultative nature. Forty have established High Courts more or less based on British Indian model. Thirty four claim to have separated executive from judicial functions. There are also many diversities in the social and economic conditions of these states and varying degrees of administrative efficiency, educational progress and political development. Their administration is borrowed from the adjoining provinces and many of the retired officers from provinces are engaged there to reorganise various departments. They have their own police and a limited number of troops.

Each state manages its own internal affairs by making and administering its own laws, and imposing, collecting and spending its own taxes. In spite of legislative councils in some states the "authority of the ruling chief is full and complete both in respect of legislation and taxation and the distinction between the civil list and the state revenue is mostly at the direction of the Chief." Courts are also under his control.

4. Relations with Paramount Power.

The relations between the Indian States and the paramount power are determined by treaties, or other written documents, or usage or agreement but the Crown is in all cases responsible for the state's external relations and for its territorial integrity.

The subsidiary alliance as described in the earlier part of this chapter governs almost all the states. There are about 40 states, all of major importance, which have actual treaties with the paramount power. A large number of them have some form of 'engagement' or 'Sanad', i. e. a concession or acknowledgment of authority or privilege, generally coupled with conditions from paramount power. Others enjoy in some form or other recognition of their status by the Crown.

But "no State has jurisdiction over European British subjects and foreigners who are subjects to the jurisdiction of the Residents or of British Indian Courts, and jurisdiction is ceded over military stations and cantonments, civil stations and some Railway lands."

The Governor-General as the representative of the Crown exercises control over the states. But this control is mostly through an agent. In immediate political relations with the Government of India are Hyderabad, Mysore, Baroda, Kashmir and Gwalior. The Agent of the Governor-General in Baluchistan is concerned with relations with Kalat and Las Bela. The Central India Agency whose Agent resides at Indore with political Agents in Bhopal, Bundelkhand and Malwa includes 28 salute states and 69 non-salute states. The Deccan States Agency was created in 1933 by detaching the states controlled by the Bombay Government. The Agent is the Resident at Kolhapur and there are 16 other smaller states. The Eastern states Agency was also created in 1933 by detaching the states from Central Provinces, Bihar and Orissa. The Agent resides at Ranchi with a

Secretary and political agent at Sambalpore. In the same year Gujrat State Agency with 11 big and 70 small states was created. The Madras States Agency was created as old as 1923 and the Punjab States Agency in 1921. The Rajputana States Agency has its headquarters at Mount Abu where the Agent resides ; Bikaner and Sirohi are directly under him. Twenty others come under the Agent at Jaipur. The Western India Agency was created in 1924 to look after the States of Kathiawar. Cutch and Palanpur, Mahi Kanta Agency being added in 1933. Besides these some of the states remain in direct relations with the local Government. Assam is connected with Manipur and 16 other small states. Bengal has the states of Cooch Behar and Tripura. The Punjab is connected with 18 Simla States, and the United Provinces with Rampur, Benares and Tehri Garhwal.

Intervention by paramount power in internal affairs is resorted to in case of gross misgovernment. The paramount power is responsible for the integrity of the state and to preserve the dynasty. On the other hand the states have no foreign policy and no international existence. They have no separate representation in the League of Nations and the Indian representative at Geneva and other international bodies are supposed to be representatives of India as a whole. They cannot receive any diplomatic agent from any foreign power. The subject of an Indian State cannot obtain passport from his prince for foreign travel; and in foreign countries they are all regarded as British subjects for all practical purposes. Amongst themselves all disputes are referred to arbitration

of the paramount power. In all inter-state questions, e. g. boundary disputes or mutual extradition of criminals, or inter-state Railway lines, the paramount power settles them.

5. INCIDENTS OF STATE GOVERNMENTS.

A certain number of States pay tribute, varying in amount to the Crown, which is credited into the revenues of the Government of India. The tribute has sometimes risen from the terms on which territory was exchanged or resorted or from settlement of claims between governments but in many cases it is in lieu of former obligations to supply or maintain troops. In some cases tribute is paid by some subordinate state to a larger state e. g., a number of states in Kathiawar and Gujrat pay tribute to Baroda, and Gwalior claims tribute from some of the smaller states of central India.

Most of the Inland states impose their own import and export duties at their boundaries. Mysore is however an exception. The import and export duties in many states yield revenue, second only to land revenue. Many states which have no seaports claim to share with the Government of India the revenue derived from customs. Some states have also their own railways but in most cases arrangements have been made between the Crown and the states by which the Government of India have secured special jurisdiction over territories of those states which are taken up for railway purposes.

As regards Posts and Telegraphs, the British Telegraph system, by agreement, extends every-

where. In most cases similar agreements exist for the service of the British Post in Indian states, but Fifteen States have their own postal depertments and five of these have conventions by which they work in co-operation with the British Posts. There are only eight states which mint their own rupee currency. In the rest, the mints are only worked for copper coinage or for striking silver or gold coins on special ceremonial occasions.

6. THE CHAMBER OF PRINCES.

Events have tended gradually to draw the Indian states into closer harmony with each other as also with the paramount power. The colleges at Ajmer, Rajkot, Indore etc. afford opportunities for association of the sons of the ruling chiefs. On the other hand the Chamber of Princes which was set up by Royal Proclamation on the 8th February, 1921 created more opportunities for conference amongst the ruling princes themselves. The Chamber of Princes is a deliberative, consultative and advisory, but not an executive body. It is meant to see that the treaty rights and obligations are mutually and duly observed and enforced. The Chamber of Princes consists in the First place, of 108 rulers of states who are members in their own right. In the second place the Chamber includes 12 additional members elected by the rulers of 127 other states not included in the above. The Chamber meets every year in the magnificient Council House at Delhi. The Viceroy is the president of the Chamber and a Chancellor and Pro-chancellor are elected from amongst the members

annually. An important organ of the Chamber is the standing committee which consists of 7 members including the Chancellor and the Pro-chancellor. The functions of the standing committee are to advise the Viceroy on questions referred to the committee by him.

7. States Under the New Constitution.

Under the Act the States are allowed the option to accede to the Federation. Whether or not the majority of States enter Federation in due course, the relations of the States and the Crown must necessarily remain of great importance. The scheme of Federation indeed demands that the States should surrender sufficient autonomy to make the Federation a real one. With the inclusion of States into Federation there is apt to be a tendency towards reforms; "a representative assembly as advisory or consultative body for passing legislation; a system of law based on modern principles; an impartial judiciary; efficient civil service; and various other reformatory movements."

Other details, regarding their inclusion in the Federation have already been described in Chapter IV.

8. Nepal, Bhutan and Afghanistan.

The British Government has also relations with the States on the borders of India. These are three, Nepal, Bhutan and Afghanistan But they are not Indian States and are not subordinate to the British Government,

The small hilly independent kingdom of Nepal is a narrow tract of country of about 520 miles along the southern slope in the central part of the Himalayas. It has an area of about 56,000 sqr. miles with a population of about 5,580,000 chiefly Hindus and an annual revenue collected mostly from land, forest and customs amounts to about £1,000,000. It has an army of about 45,000. Most part of the country is mountainous. Till the later half of the 18th century the country was split up into several small kingdoms, when the Gurkhas under Prithvi Narayan Shah overran and conquered the different kingdoms. Since then Nepal is one consolidated Kingdom. In 1846 the head of the Rana family Maharaja Jung Bahadur Rana obtained from the sovereign the perpetual right to the office of prime minister which his family still enjoys.

The relations of Nepal with the Government of India are governed by the treaty of 1816 and subsequent agreements by which a representative of the British Government is received at Kathmandu. The friendly relations with the British Government have steadily been maintained and to further strengthen and cement the bonds of friendship that have subsisted so long between the two countries, a "new treaty of friendship was concluded between the Governments of Nepal and Great Britain in 1923; and Nepal which was till then restricted in matters of external sovereignty was made completely independent externally as well as internally and all the restrictions on the employment of Europeans or Americans were withdrawn." Nepal was also allowed to import munitions of war

so long as she remained friendly with the Crown. The British Resident was withdrawn and an Envoy was appointed in his place. In 1934 a Napalese legation was opened in London. The Government is monarchy. Slavery was abolished and 60,000 slaves were set free. Kathmandu, its capital was connected by telephone with India. A large number of Gurkhas serve in British Army.

Bhutan which is very near Nepal, is "not so independent." Since 1863 when portions of its territory were annexed, it has been in receipt of a grant from India fixed in 1910 at £6,677 a year while it had undertaken to be guided in its foreign relations by British advice. A hereditary Maharaja was installed in 1907 replacing the joint control by a spiritual and temporal chief. Bhutan has an area of 18,000 sqr. miles and its population consisting of Buddhists and Hindus, has been estimated at 300,000.

Afghanistan has continuoas relatious with the Government of India for a number of years which need not be related in this short space. Suffice it to say that the position of Afghanistan is internationally of importance. It has always been the gate way to India. It has a population of about 6,380,000. "Afghanistan was recognised as falling within British sphere of influence as late as 1919 but in that year it was declared as independent internationally."

Between the North-West Frontier Province and Afghanistan lies a portion of one of the highest and most rugged mountain system of the world. This frontier has long presented and still presents both an international and local problem of enor-

mous complexity and difficulty. This area is full of Pathan tribesman split up in a remarkable way in their various territories—Wazirs, Mahsuds, Bannuchis, Afridis, Shinwaries, Mohmands and so on—and under their respective maliks are constantly at feud amongst themselves. This tribal area is estimated to have a population over 30 lakhs as against only 25 lakhs in the North-West Frontier Province. This part of the country although not directly under British administration forms a sphere of British influence to a certain extent, Justice is administered through the traditional indigenous tribunals called 'jirgas.'

CHAPTER XXI.

BRITISH BURMA.

"Enmity never comes to an end through enmity here below; it comes to an end through non-enmity. This has been the rule for eternity."—Dhammapad.

1. Growth of the Burman Constitution.

The Government of India Act, 1935 separates Burma, the largest province from the rest of India. It is now to be governed as an individual territory under its own constitution, the Government of Burma Act, 1935.

Burma covers in all 261,000 sq. miles of which 192,000 sqr. miles is under direct British administration 7,000 sqr. miles is unadministered, and 6,200 sqr. miles consist of states of semi-independent nature. There is also the Assigned Tract of Namwan held on perpetual lease from China in order to facilitate frontier transit questions. The total population of Burma is over 14 millions out of which about 11 millions are Burmans and the rest are either Indians, Chinese or others. In religion Burma differs greatly from India, for 12,348,037 of the people are Buddhists, 584,839

Muslims, 331,106 Christians, and the remaining include 570,953 Hindus, 10,907 Shikhs and 721 Jains. The total sea-borne trade of Burma amounts to about £63,000,000. Burma's annual revenue is about £6,000,000. The language of the people is Burmese or Shangali. About three-fifths of the country is forest from which quanities of teak are exported.

The British connection with Burma began in the middle of the 17th century when private merchants established themselves at Rangoon to develop the teak and lac trade. But the relations between these merchants and the Burman Government were not cordial and there were frequent unpleasant events on the frontiers of Burma. The seizure of the British Island of Shahpuri on the Arakan coast by the Burmese Government culminated in the First Burmese War which resulted in the peace of Yandabo by which Arakan, Tenasserim, Upper Assam, Cachar, Jaintia and Manipur were added to British territory. By a second Burmese War the province of Pegu was annexed to British territory in 1852 and the portions so acquired were placed under a Chief Commissioner in 1862. In 1879 there were again some strained relations between the British merchants and the Burman Government. This led to the 3rd Burmese War in 1885 by which Upper Burma was also annexed. In 1897 Upper Burma and Lower Burma were united into a single Province and were placed under a Lieutenant-Governor. In the same year Burma was given a Legislative Council. In the Minto-Morley Reforms this Legislative Council was to have a maximum of 30 members and its proceedings

were conducted in the same manner as those of other provinces. Burma was not included in the Montagu-Chelmsford Reforms, which led to great dissatisfaction amongst the Burmese. In 1921 therefore a small committee presided over by Sir Frederick Whyte visited Burma which was created a Governor's province in 1923 with a Legislative Council of 103 members and a system of dyarchical government anologous to that prevailing in other provinces of India was inaugurated.

2. BURMA UNDER THE NEW CONSTITUTION.

The Statutory Commission recommended the severence of Burma from the rest of India on account of its distinctly different geographical, ethical, religious and social environments. The British Government shared these views, and Burma was separated from the rest of India by the Government of India Act, 1935. Its constitution is modelled on the constitution of Federal India. Burma is now to be governed by a Governor, who is normally to act on the advice of his ministers not exceeding 10 in number. In matters of defence, external relations, ecclesiastical affairs, monetary policy, currency and coinage, the Shan States and similar areas, and areas which do not form part of British territory, the Governor is to act in his discretion with the help of three counsellors. The special responsibilities of the Governor are the same as those in the case of the Governor General of Federal India. He may also appoint a financial Advisor and an Advocate-General and is required to exercise the same powers in respect of police

the prevention of crimes of violence and the prevention of leakage of certain informations as in the provinces of India.

3. Burman Legislature.

The legislature of Burma consists of a Governor, a Senate whose life is 9 years and a House of Representatives whose tenure is 5 years. The Senate is to have 36 members, half of which are to be nominated by the lower house on the system of proportional representation. A high property qualification is required in the case of Senators. The House of Representatives is to consist of 132 members and all its members are to be elected. It is estimated that over 23 per cent of the population would be enfranchised. The probable number of male voters is 2,000,000 and those of females 700,000. There are 91 non-communal seats, 12 Karen seats, 8 Indians, 2 Anglo-Burman, 3 European Seats; 11 for the representation of commerce and industry, 1 for the University, and two each for Indian and non-Indian labour. Matters regarding qualifications of members, privileges, rules of procedure and other questions are regulated as in India. The powers of Senate are very similar to those of Legislative Councils in India. The previous sanction of the Governor extends to the same matters as in the case of the Governor-General, so far as they are applicable to Burma, but there is added immigration legislation. The Governor's prior sanction is also required in certain defined cases. Differences between the views of the two houses are solved after

12 months, normally by joint sittings. The Bills passed by the Burmese legislature may be assented to, reserved or refused assent. As in the case of India the Governor has the power of making ordinances and may also enact permanent acts when necessary. Moreover he can also make regulations for the scheduled areas. He can also assume responsibility himself of the whole administration in case the constitutional machinery fails, subject to the approval of Parliament.

4. ADMINISTRATIVE PROVISIONS

Financial provisions follow the Indian model except that the lower house only has authority to assent to the grants. The Governor has the same power of restoring grants as in India. Audit is entrusted to an Auditor-General. Provision is also made for a Railway Board and a Rates Committee may be appointed but there is no tribunal for Burma as the issued involved in India do not arise for Burma.

The High Court is also similar to that in an Indian Province. Services are similarly safeguarded while the Secretary of State is authorised to select officers for the Burma Civil Service Class I, the Burma Medical Civil Service, and the Burma Police Class I. The Burma Frontier Service, parallel to the Indian Political Service, is under the Governor's control. There is also provision for the Burma Public Services Commission similar to that of India.

With a view to avoid disturbance in trade relations, power is given to the Crown in Council to regulate duties to be imposed on goods exported

from or into Burma or India. Maintenance *of Status quo* for 3 years is arranged. The financial relations between Burma and India have already been determined by a Commission whose report has been published. The Secretary of State is to be advised by not more than 3 advisors similar to those of India.

The native states are unknown to Burma but exceptional position is occupied by the Federated Shan States, which are British territories but which are governed by their own chiefs with full powers. They fall within the discretionary powers of the Governor and until otherwise directed by the King in Council he will continue to control the federal fund of this state.

The separation of Burma from the rest of Indian naturally raises the question of allocation of debt. An advisory tribunal recommended that as a general principle the proper ratio in which Burma is to contribute should be 7.5 per cent. The King in Council will fix this ratio as he may think fit.

There is however no general power to amend the constitution. But similar provisions have been made as in the case of India. Thus after 10 years amendments may be asked for by the Burman Legislature regarding the composition of the legislature, or the method of choosing or the qualification of members or franchise. As in India provision is made for the suspension of the constitution in the event of deadlock. The King in Council will fix the date of the operation of the new constitution under the Act.

APPENDIX I.

TABLE OF SEATS.

The Council of State.

Representatives of British India.

1	2	3	4	5	6	7
Province or Community.	Total Seats.	General Seats.	Seats for Scheduled Castes.	Sikh Seats.	Muhammadan Seats.	Women's Seats.
Madras ..	20	14	1	..	4	1
Bombay ..	16	10	1	..	4	1
Bengal ..	20	8	1	..	10	1
United Provinces ..	20	11	1	..	7	1
Punjab ..	16	3	..	4	8	1
Bihar ..	16	10	1	..	4	1
Central Provinces and Berar ..	8	6	1	..	1	..
Assam ..	5	3	..	..	2	..
North-West Frontier Province ..	5	1	..	..	4	..
Orissa ..	5	4	..	..	1	..
Sind ..	5	2	..	..	3	..
British Baluchistan ..	1	..	..	..	1	..
Delhi ..	1	1	..	..	..	..
Ajmer-Merwara ..	1	1	..	..	..	..
Coorg ..	1	1	..	..	..	..
Anglo-Indians ..	1	..	..	..	..	..
Europeans ..	7	..	..	..	..	..
Indian Christians ..	2	..	..	..	..	..
Total ..	150	75	6	4	49	6

APPENDIX II.

TABLE OF SEATS.

The House of Assembly.

Representatives of British India.

1	2	3	4	5	6	7	8	9	10	11	12	13
		General Seats.										
Province.	Total Seats.	Total of General Seats.	General Seats reserved for Scheduled Castes.	Sikh Seats.	Muhammadan Seats.	Anglo-Indian Seats.	European Seats.	Indian Christian Seats	Seats for representatives of commerce and industry.	Landholders Seats.	Seats for representatives of labour.	Women's Seats.
Madras	37	19	4	..	8	1	1	2	2	1	1	2
Bombay	30	13	2	..	6	1	1	1	3	1	2	2
Bengal	37	10	3	..	17	1	1	1	3	1	2	1
United Provinces ..	37	19	3	..	12	1	1	1	..	1	1	1
Punjab	30	6	1	6	14	..	1	1	..	1	..	1
Bihar	30	16	2	.	9	.	1	1	..	1	1	1
Central Provinces and Berar	15	9	2	.	3	..	..	..	..	1	1	1
Assam	10	4	1	..	3	..	1	1	..	..	1	..
North-West Frontier Province	5	1	..	..	4	..	..	..	..	..	..	..
Orissa	5	4	1	..	1	..	..	..	..	..	..	..
Sind	5	1	..	..	3	..	1	..	..	..	..	..
British Baluchistan ..	1	..		..	1	..	..	..	..	..	..	..
Delhi	2	1	.	..	1	..	..	..	..	..	..	..
Ajmer-Merwara	1	1	.		..	..	..	..	..	..	..	..
Coorg	1	1	..	..	..	..	..	..	..	..	..	..
Non-Provincial Seats ..	4	..	..	..	.	..	..	..	3	..	1	..
Total ..	250	105	19	6	82	4	8	8	11	7	10	9

APPENDIX III.

Legislative Lists.

LIST I.

Federal Legislative List.

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States. 2. Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas. 3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India. 4. Ecclesiastical affairs,

including European cemeteries. 5. Currency, coinage and legal tender. 6. Public debt of the Federation. 7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Bank. 8. Federal Public Services and Federal Public Service Commission. 9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues. 10. Works, lands and buildings vested in, or in the possession of His Majesty, for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and as regards property in a Federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement. 11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation. 12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies. 13. The Benares Hindu University and the Aligarh Muslim University. 14. The Survey of India, the Geological, Botanical and Zoological Surveys of India ; Federal meteorological organisations. 15. Ancient and historical monuments ; archæological sites and remains. 16. Census. 17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom ; pilgrimages to places beyond India. 18. Port quarantine ; seamen's and marine hospitals, & hospitals connected with port quarantine. 19. Import

and export across customs frontiers as defined by the Federal Government. 20. Federal railways, the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers. 21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction. 22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein. 23. Fishing and fisheries beyond territorial waters. 24. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes. 25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft. 26. Carriage of passengers and goods by sea or by air. 27. Copyright, inventions, designs, trade marks and merchandise marks. 28. Cheques, bills of exchange, promissory notes and other like instruments. 29. Arms; firearms; ammunition. 30. Explosives. 31. Opium, so far as regards cultivation and manufacture, or sale for export. 32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport. 33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest. 35. Regulation of labour and safety in mines and oilfields. 36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest. 37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province. 38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State. 39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be ; extension of the powers and jursidiction of members of a police force belonging to any unit to railway areas outside that unit. 40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder. 41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly ; the salaries, allowances and privileges of the members of the Federal Legislature ; and, to such extent as is

expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature. 42. Offences against laws with respect to any of the matters in this list. 43. Inquiries and statistics for the purposes of any of the matters in this list. 44. Duties of customs, including export duties. 45. Duties of excise on tobacco and other goods manufactured or produced in India except—(*a*) alcoholic liquors for human consumption ; (*b*) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ; (*c*) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (*b*) of this entry. 46. Corporation tax. 47. Salt. 48. Salt lotteries. 49. Naturalisation. 50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province. 51. Establishment of standards of weight. 52. Ranchi European Mental Hospital. 53. Jurisdiction and powers of all courts, except the Federal Court ; with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers. 54. Taxes on income other than agricultural income. 55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies ; taxes on the capital of companies. 56. Duties in respect of succession to property other than agricultural land. 57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts. 58. Terminal taxes on goods or passengers carried by railway or air ; taxes on railway fares and freights. 59. Fees in respect of any of the matters in this list, but not including fees taken in any Court,

LIST II.

PROVINCIAL LEGISLATIVE LIST.

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil powers) ; the administration of justice ; constitution and organisation of all courts, except the Federal Court, and fees taken therein ; preventive detention for reasons connected with the maintenance of public order ; persons subjected to such detention. 2. Jurisdiction and powers of all courts the Federal Court, with respect to any of the matters in this list ; procedure in Rent and Revenue Courts. 3. Police, including railway and village police. 4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein ; arrangements with other units for the use of prisons and other institutions. 5. Public debt of the Province. 6. Provincial Public Services and Provincial Public Service Commissions. 7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues. 8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province. 9. Compulsory acquisition of land. 10. Libraries, museums and other similar institutions controlled or financed by the Provinces. 11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder. 12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, of the President and Deputy President thereof ; the salaries, allowances and privileges of the members of the Provincial Legislature, and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons

who refuse to give evidence or produce documents before Committees of the Provincial Legislature. 13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration. 14. Public health and sanitation ; hospitals and dispensaries ; registration of births and deaths. 15. Pilgrimages, other than pilgrimages to places beyond India. 16. Burials and burial grounds. 17. Education. 18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I ; minor railways subject to the provisions of List I with respect to such railways ; municipal tramways ; ropeways ; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways ; ports, subject to the provisions in List I with regard to major ports ; vehicles other than mechanically propelled vehicles. 19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power. 20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases ; improvement of stock and prevention of animal diseases ; veterinary training and practice ; pounds and the prevention of cattle trespass. 21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents ; transfer, alienation and devolution of agricultural land ; land improvement and agricultural loans ; colonization ; Courts of Wards, encumbered and attached estates ; treasure trove. 22. Forests. 23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control. 24. Fisheries. 25. Protection of wild birds

and wild animals. 26. Gas and gasworks. 27. Trade and commerce within the Province ; markets and fairs ; money-lending and money-lenders. 28. Inns and innkeepers. 29. Production, supply and distribution of goods ; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control. 30. Adulteration of foodstuffs and other goods ; weights and measures. 31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III. 32. Relief of the poor ; unemployment. 33. The incorporation, regulation ; and winding up of corporations other than corporations specified in List I ; unincorporated trading ; literary ; scientific, religious and other societies and associations ; co-operative societies. 34. Charities and charitable institutions ; charitable and religious endowments. 35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition. 36. Betting and gambling. 37. Offences against laws with respect of any of the matters in this list. 38. Inquiries and statistics for the purpose of any of the matters in this list. 39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue. 40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India— (*a*) alcoholic liquors for human consumption ; (*b*) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ; (*c*) medicinal and

toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry. 41. Taxes on agricultural income. 42. Taxes on lands and buildings, hearths and windows. 43. Duties in respect of succession to agricultural land. 44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development. 45. Capitation taxes. 46. Taxes on professions, trades, callings and employments. 47. Taxes on animals and boats. 48. Taxes on the sale of goods and on advertisements. 49. Cesses on the entry of goods into a local area for consumption, use or sale therein. 50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling. 51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty. 52. Dues on passengers and goods carried on inland waterways. 53. Tolls. 54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST III.

CONCURRENT LEGISLATIVE LIST.

PART I.

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power. 2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act. 3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act ; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province. 5. Evidence and oaths ; recognition of laws, public acts and records and judicial proceedings. 6. Marriage and divorce ; infants and minors ; adoption. 7. Wills, intestacy, and succession, save as regards agricultural land. 8. Transfer of property other than agricultural land ; registration of deeds and documents. 9. Trusts and Trustees. 10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land. 11. Arbitration. 12. Bankruptcy and insolvency ; administrators-general and official trustees. 13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty. 14. Actionable wrongs, save in as far as included in laws with respect to any of the matters specified in List I or List II. 15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list. 16. Legal, medical and other professions. 17. Newspapers, books and printing presses. 18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients. 19. Poisons and dangerous drugs. 20. Mechanically propelled vehicles. 21. Boilers. 22. Prevention of cruelty to animals. 23. European vagrancy ; criminal tribes. 24. Inquiries and statistics for the purpose of any of the matters in this Part of this List. 25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

PART II.

26. Factories. 27. Welfare of labour, conditions of labour ; provident funds ; employers' liability and workmen's compensation ; health insurance, including invalidity pensions ; old age pensions. 28. Unemployment insurance. 29. Trade unions ; industrial and labour disputes. 30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants. 31. Electricity. 32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways ; carriage of passengers and goods on inland waterways. 33. The sanctioning of cinematograph films for exhibition. 34. Persons subjected to preventive detention under Federal authority. 35. Inquiries and statistics for the purpose of any of the matters in this Part of this List. 36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

APPENDIX IV.

TABLE OF SEATS.

Provincial Legislative Councils.

1	2	3	4	5	6	7	8
Province.	Total number of Seats.	General Seats.	Muhammadan Seats	European Seats.	Indian Christian Seats.	Seats to be filled by Legislative Assembly.	Seats to be filled by Governor.
Madras ..	Not less than 54 Not more than 56	35	7	1	3	..	Not less than 8. Not more than 10.
Bombay ..	Not less than 29 Not more than 30	20	5	1	.	..	Not less than 3. Not more than 4.
Bengal ..	Not less than 63 Not more than 65	10	17	3	.	27	Not less than 6. Not more than 8.
United Provinces	Not less than 58 Not more than 60	34	17	1	..	..	Not less than 6. Not more than 8.
Bihar ..	Not less than 29 Not more than 30	9	4	1	..	12	Not less than 3. Not more than 4.
..	Not less than 21 Not more than 22	10	6	2	..	..	Not less than 3. Not more than 4.

APPENDIX V.

TABLE OF SEATS.

Provincial Legislative Assemblies.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
		General Seats.												Seats for Women.				
Province.	Total Seats.	Total of General Seats.	General Seats reserved for Scheduled Castes.	Seats for representatives of backward areas and tribes.	Sikh Seats.	Muhammadan Seats.	Anglo-Indian Seats.	European Seats	Indian Christian Seats.	Seats for representatives of commerce, industry, mining and planting.	Landholders' Seats.	University Seats.	Seats for representatives of labour.	General.	Sikh.	Muhammadan.	Anglo-Indian.	Indian Christian.
Madras	215	146	10	1	..	28	2	3	8	6	6	1	6	6	..	1	..	1
Bombay	175	114	15	1	..	29	2	3	3	7	2	1	7	5	..	1	..	..
Bengal	250	78	30	..	..	117	3	11	2	19	5	2	8	2	..	2	1	..
United Provinces ..	228	140	20	..	..	64	1	2	2	3	6	1	3	4	..	2	..	..
Punjab	175	42	8	..	31	84	1	1	2	1	5	1	3	1	1	2	..	..
Bihar	152	86	15	7	..	39	1	2	1	4	4	1	3	3	..	1	..	..
Central Provinces and Berar.	112	84	20	1	..	14	1	1	.	2	3	1	2	3	..	..	..	..
Assam	108	47	7	9	..	34	..	1	1	11	..	..	4	1	..	..	..	..
North-West Frontier Province.	50	9	.	..	3	36	..	.	..	..	2	..	..	..	..	..	..	..
Orissa	60	44	6	5	..	4	..	..	1	1	2	..	1	2	..	..	..	..
Sind	60	18	..	..	..	33	..	2	..	2	2	..	1	1	..	1	..	..

In Bombay seven of the general seats shall be reserved for Marathas.
In the Punjab one of the Landholders' seats shall be a seat to be filled by a Tumandar.
In Assam and Orissa the seats reserved for women shall be non-communal seats.

APPENDIX VI.

List of Corrupt Practices at Elections.

(*First Schedule of the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order* 1936.)

PART I.

1. Bribery, that is to say, any gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratification to any person whomsoever, with the object, directly or indirectly, of inducing—

(*a*) a person to stand or not to stand as, or to withdraw from being, a candidate at an election; or

(*b*) an elector to vote or refrain from voting at an election;

or as a reward to—

(*i*) a person for having so stood or not stood, or for having withdrawn his candidature; or

(*ii*) an elector for having voted or refrained from voting.

For the purposes of this paragraph the term gratification is not restricted to pecuniary gratifications estimable in money, and it includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election and duly entered in the return of election expenses prescribed by this Order.

2. Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, with the free exercise of any electoral right:

Provided that—

(*a*) without prejudice to the generality of the provisions of the paragraph, any such person as is referred to therein who—

(*i*) threatens any candidate or elector, or any person in whom a candidate or elector is interested, with any injury of any kind; or

(*ii*) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of that candidate or elector within the meaning of this paragraph;

(*b*) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this paragraph.

3. The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person, with the connivance of a candidate or his agent, the application by a person for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person for a voting paper in his own name when, by reason of the

fact that he has already voted in the same or some other constituency, he is not entitled to vote.

4. The removal of a voting paper from the polling station during polling hours by any person with the connivance of a candidate or his agent.

5. The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

6. The incurring or authorising by a candidate or his agent of expenditure, or the empolyment of any person by a candidate or his agent, in contravention of this Order or of any Act of the Provincial Legislature or Rules.

PART II

1. Any act specified in Part I of this Schedule, when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his gent.

2. The application by a person at an election for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or for a voting paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote.

3. The receipt of, or agreement to receive, any gratification whether as a motive or a reward—

(*a*) by a person for standing or not standing as, or for withdrawing from being, a candidate; or

(*b*) by any person whomsoever for himself or any other person for voting or refraining from voting, or for inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw his candidature.

For the purposes of this paragraph the term "gratification" has the same meaning as it has for the purposes of paragraph one of Part I of this Schedule.

4. The making of any return of election expenses which is false in any material particular, or the making of a declaration verifying any such return.

PART III

1. The incurring or authorisation by any person other than a candidate or his agent of expenses on account of holding any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever, for the purpose of promoting or procuring the election of the candidate, unless he is authorised in writing so to do by the candidate.

2. The hiring, using or letting, as a committee room or for the purpose of any meeting to which electors are admitted, of any building, room or other place where intoxicating liquor is sold to the public.

3. The issuing of any circular, placard or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof.

APPENDIX VII.

[*Part IV of the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order*, 1936.]

DISQUALIFICATIONS.

1. The offences and practices specified, in relation to certain elections, in the Second Schedule to this Order shall, for the periods respectively specified in relation to those offences and practices in that Schedule, entail disqualification for membership of any provincial legislature.

2. If any person—

(*a*) is, in connection with an election to a provincial Legislature, the Coorg Legislative Council or a local body in British India, convicted of an offence under Chapter IXA of the Indian Penal Code punishable with imprisonment for a term exceeding six months; or

(*b*) is, after an inquiry under Part III[1] of this Order reported as guilty of any such corrupt practice as is specified in Part I or Part II of the First Schedule[2] to this Order,

he shall, for a period of six years from the date of the conviction or report, be disqualified for voting at any election.

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1. Relating to election Petitions.
2. Reproduced as appendix VI of this book.

3. If in relation to any election (other than an election by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council), any person is, after such an inquiry as aforesaid, reported as guilty of any such corrupt practice as is specified in Part III of the said Schedule, he shall be disqualified for voting at any election for a period of four years from the date of the report.

4. Where under either of the two last preceding paragraphs a person is, in connection with an election in a commerce and industry, mining or planting constituency, disqualified for voting for any period, then, if that person was at the date of the election either—

(*a*) included in the electoral roll for the constituency as the nominee of a firm, Hindu joint family or corporation entitled to nominate persons for inclusion therein; or

(*b*) a member of any such firm or Hindu joint family or a Director, managing agent or manager of any such corporation, or a person authorised to sign the name of any such firm, Hindu joint family or corporation in the ordinary, course of its business

the firm, family or corporation shall, for the like period, be disqualified from nominating persons for inclusion in the electoral roll of any commerce and industry, mining or planting constituency.

5. If default is made in making the return of the election expenses of any persons who has been nominated as a candidate at an election to which Part II[1] of this Order applies, or if such a return is found, either by Commissioners holding an inquiry into the election or by any court in a judicial proceeding, to be false in any material particular, the candidate and his election agent shall be disqualified for voting at

[1] Relating to election agents and expenses.

any election for a period of five years from the date by which a return was required to be lodged.

6. Every person shall be disqualified for voting at any election who is for the time being disqualified for voting at election to the Federal Legislature by reason of misconduct in connection with an election to that Legislature, or by reason of a default in marking, or of the falsity of, any return of election expenses at any election to that Legislature.

Reference in this paragraph to the Federal Legislature shall, until the establishment of the Federation, be construed as references to the Indian Legislature.

7. Any person who is for the time being disqualified under the foregoing provisions of this Part of this Order for being a member of a Provincial Legislature, or for voting at elections, shall, so long as the disqualification exists, also be disqualified for being an election agent at any election.

8. Any disqualification under paragraphs two to five of this Part of this Order arising in connection with an election to the Legislature of, or to a local body in, a Province, may be removed by the Governor of that Province in his discretion, and any other disqualification under the said paragraph two may be removed, before the establishment of the Federation, by the Governor-General in Council, and, after the establishment of the Federation, by the Governor-General in his discretion.

9. In paragraph one of this Part of this Order, "elections" includes all the elections referred to in the Second Schedule to this Order, but save as aforesaid, the references in this Part of this Order to elections, other than express references to elections of any other kind, shall be construed as references to elections as defined in paragraph three of Part I of this Order.

DISQUALIFICATIONS FOR MEMBERSHIP OF PROVINCIAL LEGISLATURES.

[*Second Schedule of the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order* 1936.]

Election.	Offence of Corrupt Practice.	Period of Disqualification
Elections to which Chapter IXA of the Indian Penal Code applies.	Offences under Chapter IXA of the Indian Penal Code punishable with imprisonment for a term exceeding six months.	Six years from the date of conviction.
Elections as defined in paragraph three of Part I of this Order	Corrupt practices specified in Parts I and II of the First Schedule of this Order,	Six years from the date of the report of the tribunal holding the inquiry.
Elections as defined in paragraph three of Part I of this Order, other than elections by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council.	Corrupt practices specified in Part III of the First Schedule to this Order.	Four years from the date of the report of the tribunal holding the inquiry.
Elections to Federal Legislature.	Corrupt practices as defined in any Order under the Act relating to such elections.	The period for which the corrupt practice entails disqualification for membership of Federal Legislature.
Elections under the Government of India Act.	Any corrupt practice within the meaning of the Electoral Rules under the Government of India Act relating to the election in question.	Such period, commencing on the date of the report of the Commissioners under the Electoral Rules relating to the elections in question, as is the maximum period of disqualification specified in those Rules for inclusion in electoral rolls thereunder.

APPENDIX VIII

Instrument of Instructions to the Governor-General of India.

Dated 8*th March*, 1937. *GEORGE R. I.*

Instructions to Our Governor-General of India.

GIVEN at Our Court at Buckingham Palace, the Eighth day of March, 1937, in the first year of Our Reign.

WHEREAS by Letters Patent bearing date the Fifth day of March Nineteen hundred and thrity-seven, We have made permanent provision for the office of the Governor-General of India:

AND WHEREAS by those Letters Patent and by the Government of India Act, 1935 (hereinafter called "the Act"), certain powers, functions and authority for the Government of India are declared to be vested in the Governor-General.

AND WHEREAS His late Majesty King George V did before the enactment of the Act issue certain Instructions under His Royal Sign Manual to Our said Governor-General bearing date the Fifteenth day of March, 1921, and did subsequently amend the same.

AND WHEREAS the impending commencement of part III of the Act has rendered it necessary to revoke the said Instructions:

AND WHEREAS without prejudice to the provision in the Act that our Governor General shall be under

the General Control of and comply with such particular directions, if any, as may from time to time be given by Our Secretary of State and to the duty of Our Governor-General to give effect to any Instructions so received. We are minded to make general provision regarding the manner in which during the operations of part XIII of the Act Our said Governor-General shall execute all things which according to the Act and the said Letters Patent belong to his office and to the trust which we have reposed in him.

NOW, THEREFORE, we do by these Our Instructions under Our Royal Sign Manual hereby revoke the aforesaid Instructions and declare Our pleasure to be as follows:—

A.—Introductory

I. Under these Our Instructions, unless the context otherwise require, the term "Governor-General" shall include every person for the time being acting as Governor-General according to the provisions of the Act.

II. Our Governor-General shall, with all due solemnity cause Our Commission under Our Royal Sign Manual appointing him to be read and published in the presence of the Chief Justice of India for the time being, or in his absence other Judge of the Federal Court, and of so many of the members of the Executive Council of Our Governor-General as may conveniently be assembled.

III. Our Governor-General shall take the oath of allegiance and the oath for the due execution of the Office of Our Governor-General of India and for the due and impartial administration of justice, in the

form hereto appended, which oaths the said Chief Justice or, in his absence, any Judge of the Federal Court, shall, and is hereby required to tender and administer unto him.

IV. And we do authorise and require Our Governor-General by himself or by any other person to be appointed by him in that behalf to administer to every person appointed by him to be a Chief Commissioner the oaths of allegiance and of office and of secrecy hereto appended.

V. And we do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. The provisions of the last four preceding paragraphs shall not apply to any person holding office at the date of the commencement of Part III of the Act.

B.—In regard to the Executive authority of the Governor-General in Council

VII. It is Our will and pleasure that Our Governor-General shall use all endeavour consistent with the fulfilment of his responsibilities to Us and to Our Parliament for the welfare of Our Indian Subjects, that the administration of the matters committed to the Charge of our Governor-General in Council may be conducted in harmony with the wishes of Our said subjects as expressed by their representatives in the Indian Legislature so far as the same shall appear to him to be just and reasonable: and shall so order the administration of his government as to further the policy of the Act for its conversion into a Federation of all India.

C.—In regard to Relations between the Governor-General in Council and the Provinces.

VIII. Whereas it is expedient for the common good of British India that the authority of Our Governor-General in Council and of the Indian Legislature in those matters which are by law assigned to them should prevail:

And whereas at the same time it is the purpose of the Act that the Governments and Legislatures of the Provinces should be free in their own sphere to pursue their own policy:

And whereas in the interest of the harmonious co-operation of the several members of the body politic, the Act has empowered Our Governor-General to exercise, at his discretion, certain powers affecting the relations between his Government and the Provinces.

It is Our Will and pleasure that Our Governor-General in the exercise of these powers should give unbiassed consideration as well to the views of the Governments of the Provinces as to those of his own Government whenever those views are in conflict and, in particular, when it falls to him to exercise his power to issue orders to the Governor of a Province for the purpose of securing that the Executive authority of the Governor-General in Council is not impeded or prejudiced, or his power to determine whether Provincial law or Central law shall regulate a matter in the sphere in which both Legislatures have power to make laws.

IX. It is Our desire that Our Governor-General shall by all reasonable means encourage consultation with a view to common action between his Government and the Provinces and between the Provinces

themselves. It is further Our will and pleasure that Our Governor-General shall endeavour to secure the co-operation of the Provincial Governments in the maintenance of such Central agencies and institutions for research as may serve to assist the conduct by Provincial Governments of their own affairs.

X. In particular We require Our Governor-General before giving his previous sanction to any legislative proposal which it is proposed to introduce in the Indian Legislature for the imposition or variation of taxes or duties by which the revenues of the provincial Governments are or may be directly affected or for varying the meaning of the expression "agricultural income", or for alteration of the principles on which under the provisions of the Act moneys are or may be distributed to the Provinces, to ascertain by the method which appears to him best suited to the circumstances of each case the views of those Governments upon the proposal.

XI. Before granting his previous sanction to the introduction into the Indian Legislature of any Bill or amendment wherein it is proposed to authorise the Governor-General in Council to give directions to a Province as to the carrying into execution in that Province of any Act of the Indian Legislature relating to a matter specified in Part II of the Concurrent Legislative List appended to the Act, it is Our will and pleasure that Our Governor-General shall take care to see that the Governments of the Provinces which would be affected by any such measure have been duly consulted upon the proposal, and upon any other proposals which may be contained in any such measure which involve the imposition of expenditure upon the revenues of the Provinces.

XII. In considering whether he shall give his assent to any Provincial law relating to a matter

enumerated in the Concurrent Legislative List, which has been reserved for his consideration on the ground that it contains provisions repugnant to the provisions of an Act of the Indian Legislature, Our Governor-General, while giving full consideration to the proposals of the Provincial Legislature, shall have due regard to the importance of preserving substantially unimpaired the uniformity of law which the Indian Codes have hitherto embodied.

D.—MATTERS AFFECTING THE LEGISLATURE

XIII. Without prejudice to the generality of his powers as to reservation of Bills, Our Governor-General shall not assent in Our name, to, but shall reserve for the signification of Our pleasure, any Bill of any of the classes herein specified, that is to say:—

(a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court of any Province as to endanger the position which those Courts are by the Act designed to fill;

(c) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III, Part V, or section 299 of the Act.

(d) any Bill passed by a Provincial Legislature and reserved for his consideration which would alter the character of the Permanent Settlement.

XIV. It is further Our will and pleasure that in pursuance of the Agreement made between Us and

His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the Act, Our Governor-General in declaring his assent in Our name to any Bill of the Legislature of the Central Provinces and Berar which has been reserved for his consideration, shall declare that his assent to the Bill in its application to Berar has been given by virtue of the Agreement between Us and His Exalted Highness the Nizam.

E.—GENERAL.

XV. And generally Our Governor-General shall do all that in him lies to maintain standards of good administration; to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in public life; and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments; and he shall further have regard to this Instruction in the exercise of the powers by law conferred upon him in relation to matters whether of legislation or of executive government.

XVI. And finally it is Our will and pleasure that Our Governor-General should so exercise the trust reposed in him that the partnership between India and the United Kingdom within Our Empire may be furthered, to the end that India may attain its due place among our Dominions.

XVII. And we do hereby charge Our Governor-General to communicate these Our Instructions to the Members of his Executive Council and to publish the same in such manner as he may think fit.

APPENDIX IX.

INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR OF THE UNITED PROVINCES.[1]

Dated 8th March, 1937. *GEORGE R. I.*

INSTRUCTIONS to Our Governor for the time being of the United Provinces

GIVEN at Our Court at Buckingham Palace the Eighth day of March, 1937, in the first year of Our Reign.

WHEREAS by Letters Patent bearing date the Fifth day of March Nineteen hundred and thirty-seven We have made permanent provision for the Office of Governor of the United Provinces:

AND WHEREAS by those Letters Patent and by the Act of Parliament passed on the second day of August, Nineteen hundred and thirty-five and entitled the Government of India Act, 1935 (hereinafter called "the Act"), certain powers, functions and authority for the government of the United Provinces and are declared to be vested in the Governor as Our Representative :

AND WHEREAS, without prejudice to the provision in the Act that in certain regards therein specified the Governor shall act according to instructions received from time to time from Our Governor-General, and to the duty of Our Governor to give

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1. The Instrument of Instructions to the Governors of other Provinces is almost the same.

conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the Act committed to him, or with the proper discharge of any of the functions which he is otherwise by or under the Act required to exercise in his individual judgment; in any of which cases Our Governor shall, notwithstanding his Ministers' advice, act in exercise of the powers by or under the Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

IX. Our Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of the people committed to his charge who, whether on account of the smallness of their number or their primitive condition or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare upon joint political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the

several communities, and, so far as there may be in his Province at the date of the issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

X. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the Act and the safeguarding of their legitimate interests Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XI. The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the Act.

XII. Our Governor shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers which would imperil the economic life of any State, or effect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise: and he shall refer to Our Governor-General any questions which may arise as to the existence of any such right.

XIII. In the framing of rules for the regulation of the business of the Provincial Government Our Governor shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Finance Minister shall be consulted upon any proposal by any other Minister which affects the finances of the Province: and further that no re-appropriation within a Grant shall be made by any Department other than the Finance Department, except in accordance with such rules as the Finance Minister may approve; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers.

He shall further in those rules make due provision to secure that prompt attention is paid to any representation received by his Government from any minority.

XIV. Having regard to the powers conferred by the Act upon Our Secretary of State to appoint persons to Our Service if, in his opinion, circumstances arise which render it necessary for him so to do in order to secure efficiency in irrigation, Our Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of irrigation in his Province in order that he may, if need be, place this information at the disposal of Our Governor-General.

XV. In the exercise of the powers by law conferred upon him in relation to the administration of areas declared under the Act to be Excluded or Partially Excluded Areas, or to the discharge of his special responsibility, for the safeguarding of the legitimate interests of minorities, Our Governor shall, if he thinks this course would enable him the better to discharge his duties to the inhabitants of those areas or to primitive sections of the population elsewhere, appoint an officer

with the duty of bringing their needs to his notice and advising him regarding measure for their welfare.

C.—MATTERS AFFECTING THE LEGISLATURE.

XVI. In determining whether he shall in Our name give his assent to, or withhold his assent from, any Bill Our Governor shall, without prejudice to the generality of his power to withhold his assent on any ground which appears to him in his discretion to render such action necessary or expedient, have particular regard to the bearing of the provisions of the Bill upon any of the special responsibilities imposed upon him by the Act.

XVII. Without prejudice to the generality of his powers as to reservation of Bills, Our Governor shall not assent in Our name to, but shall reserve for the consideration of Our Governor-General, any Bill of any of the classes herein specified, that is to say :—

(a) any Bill the provisions of which would would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Act designed to fill;

(c) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III of Part V or section 299 of the Act;

(d) any Bill which would alter the character of the Permanent Settlement.

And in view of the provisions in this clause of these Our Instructions, it is Our will and pleasure that if his previous sanction is required under the Act to the introduction of any Bill of the last-mentioned description Our Governor shall not withhold that sanction to the introduction of the Bill.

XVIII. It is Our will that the power vested by the Act in Our Governor to stay proceedings upon a Bill, clause or amendment in the Provincial Legislature in the discharge of his special responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.

XIX. It is Our will and pleasure that the seats in the Legislative Council to be filled by the nomination of Our Governor shall be so apportioned as in general to redress, so far as may be, inequalities of representation which may have resulted from election, and in particular to secure representation for women and the Scheduled Castes in that Chamber.

D.—GENERAL.

XX. And generally Our Governor shall do all that in him lies to maintain standards of good administration; to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the Province, and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments; and he shall further have regard to this Instruction in the exercise of the powers by law conferred upon him in relation to matters whether of legislation or of executive government.

XXI. And We do hereby charge Our Governor to communicate these Our Instructions to his Ministers and to publish the same in his Province in such manner as he may think fit.

APPENDIX X

List of Orders in Council and regulations under the Government of India Act, 1935 *published upto* 20*th April,* 1937.

1. The Government of India (Excluded and Partially Excluded Area) Order, 1936.

   (*Published in the Gazette of India of the* 21*st March,* 1936).

2. The Government of India (Consitution of Orissa) Order, 1936.

   (*Published in the Gazette of India of the* 21*st March,* 1936).

3. The Government of India (Constitution of Sind) Order, 1936.

   (*Published in the Gazette of India of the* 21*st March,* 1936).

4. The Government of India (Provincial Legislative Assemblies) Order, 1936.

   (*Published in the Gazette of India of the* 6*th June,* 1936).

5. The Government of India (Provincial Legislative Councils) Order, 1936.

   (*Published in the Gazette of India of the* 6*th June,* 1936).

6. The Government of India (Scheduled Castes) Order, 1936.

   (*Published in the Gazette of India of the* 20*th June,* 1936).

7. The Government of India (Commencement and Transitory Provision) Order, 1936.

   (*Published in the Gazette of India of the* 25*th July,* 1936).

8. The Government of India (Distribution of Revenues) Order, 1936.

(*Published in the Gazette of India of the* 25*th July*, 1936).

9. The Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936.

(*Published in the Gazette of India of the* 25*th July*, 1936).

10. The India and Burma (Income Tax Relief) Order, 1936.

(*Published in the Gazette of India of the* 31*st October*, 1936).

11. The Government of India (India Office Pensions) Order, 1936.

(*Published in the Gazette of India of the* 31*st October*, 1936).

12. The Aden Colony Order, 1936.

(*Published in the Gazette of India of the* 28*th November*, 1936).

13. The I. C. S. Regulation under the Government of India Act, 1935.

(*Published in the Gazette of India of the* 12*th December*, 1936).

14. British Nationality and States of Aliens (new) Regulation.

(*Published in the Gazette of India of the* 23*rd January*, 1937).

15. The Government of India (Commencement and Transitory Provision) Order (No. II), 1936.

(*Published in the Gazette of India of the* 16*th January*, 1937).

16. The Government of India (Audit and Accounts) Order, 1936.

(*Published in the Gazette of India of the* 16*th January*, 1937).

17. The Government of India (Federal Court) Order, 1936.

(*Published in the Gazette of India of the* 16*th January*, 1937).

18. The Government of India (Governors' Allowances and Privileges) Order, 1936.

(*Published in the Gazette of India of the* 23*rd January*, 1937).

19. Orissa Criminal Procedure (Election Offences) Amendment Regulation.

(*Published in the Gazette of India of the* 30*th January*, 1937).

20. The Government of India (Federal Legislature Amendment) Order, 1936.

(*Published in the Gazette of India of the* 20*th February*, 1937).

21. I. M. S. New Rules under Government of India Act, 1935.

(*Published in the Gazette of India of the* 25*th March*, 1937).

22. The Government of India (Family Pensions Funds) Order, 1936.

(*Published in the Gazette of India of the* 27*th March*, 1937).

23. The Government of India (Defence Appointment) Order, 1936.

(*Published in the Gazette of India of the 27th March, 1937*).

*24. Letters Patent Constituting the Office of the Governor-General of India.

*25. The India and Burma (Burma Monetary Arrangements) Order, 1937.

*26. The Government of India (High Court Judges) Order, 1937.

*27. The India and Burma (Transitory Period) Order, 1937.

*28. The Government of India (Adaptation of Acts of Parliament) Order, 1937.

*29. The Government of India (Adaptation of Indian Laws) Order, 1937.

*30. The Government of India (Miscellaneous Financial Provision) Order, 1937.

*31. The India and Burma (Trade Regulation) Order, 1937.

*32. The Government of Burma (Immigration) Order, 1937.

*33. The India, Burma and Aden (Transitory Provisions) (Taxation) Order, 1937.

*34. The Federal Public Services Commission (Conditions of Service) Regulation.

*35. The Federal Public Services Commission (Consultation by the Governor-General) Regulation.

*36. The Indian (Foreign Jurisdiction) Order, 1937.

*37. Letters Patent Constituting the Office of Crown Representative.

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* ***Published in the Gazette of India Extraordinary of the 1st April, 1937.***

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